SUPREME COURT OF THE UNITED STATES
October Term 1973

JAN 2 19

MICHAEL RODAK, JR.

No. 73-434

WILLIAM G. MILLIKEN, Governor of the State of Michigan, et al.,

Petitioners,

-v-

RONALD BRADLEY, et al.,

Respondents.

No. 73-435

ALLEN PARK PUBLIC SCHOOLS, et al.,

Petitioners,

-v-

RONALD BRADLEY, et al.,

Respondents.

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM,

Petitioner,

-v-

RONALD BRADLEY, et al.,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONS FOR CERTIORARI
FILED SEPTEMBER 6, 1973
CERTIORARI GRANTED NOVEMBER 19, 1973

VOLUME III
Transcript – Segregation Hearings

J. D. Reaston Company – Detroit, Michigan
Financial, Corporate & Legal Printers

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[1885] W. DEAN EDMUNDSON

was called as a witness by Plaintiffs, and being first duly sworn testified as follows:

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[1856] DIRECT EXAMINATION BY MR. LUCAS:

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[1863] Q. Directing your attention on the map to Jackson Junior High, what grades does it serve at the present time?

A. Seven through 9.

Q. Has there been any impaction in that area in terms of growth of student population?

A. Yes, there has.

Q. What does that result from?

A. There has been an increase, particularly in this area and in this area–this is the Carstens area–which has resulted primarily or which was caused primarily by the increase at Jackson.

Q. In your deposition last November you indicated the primary increase came from the Parkside Homes housing project.

MR. BUSHNELL: The page?

MR. LUCAS: Page 8.

MR. BUSHNELL: All right.

Q. (By Mr. Lucas) What was the reason for this influx, and you said primarily the Parkside housing project. Can you locate it on the map?

A. Yes, it is right in here.

[1864] Q. Is that a federal housing project as far as you know?

A. It is a housing project.

Q. Operated by the Housing Authority of the City of Detroit?

A. Yes.

Q. How long has that project been there?

A. I don't know. It was there when I came.

Q. Has there been a change in its characteristics since you have been there?

A. I couldn't tell you that.

Q. Has it changed from primarily families without children and the elderly to families with children?

A. I have heard so, but this is hearsay. I don't know of my own personal experience.

Q. Have you had an influx of children from that project?

A. We have had some. It has fluctuated, depending on the placements made by the Housing Commission, the families in that area.

Q. Is there a proposal to build a new school on the grounds of that housing project?

A. Not on the grounds of the housing project. There is no room in the housing project grounds to build a school.

Q. Is there room on the grounds immediately adjacent to the area?

A. It depends on who you talk to.

Q. Has the School Board asked for some land adjacent to this [1865] housing project?

A. We have done so.

Q. When did that take place?

A. Well, we asked for it first, I think, two years ago.

Q. When was the most recent request?

A. Probably this morning.

Q. And was there an appearance before the Park Commission or similar agency, a hearing with respect to that property?

A. There has been at least two appearances before the Park Commission.

Q. When was the most recent one?

A. Do you want the exact date?

Q. Well, was it within the last couple of weeks?

A. That's correct.

Q. And what kind of school was proposed to be built adjacent to that project?

A. Initially we asked for a primary school, K-3.

Q. K-3?

A. That's right, and the one reason for that was that it is a mile and six-tenths from the furthest point in the Parkside project for kindergarten youngsters and primary youngsters to attend the Hamilton School which serves their area.

Q. Are there any children in the area you just pointed to?

A. Yes. The project goes up – well, this map doesn't show it [1866] exactly. It goes up to about here.

Q. They are on up around the interchange where you are pointing?

A. No, I didn't point there. I pointed right here, I believe.

Q. So, in this general area are you presently bussing children within that school zone?

A. We are bussing every child from the Parkside project to the Hamilton School.

Q. What is the reason for their transportation?

A. The reason for that transportation is that coming out of that project and getting to and from school there is one route available to the kids, and we have 700 youngsters attending the Hamilton School, and when I first acquired this headaches–that was, I guess, '68, September of '68–I was assigned to the area which contains this school, and we were having nothing but trouble getting the kids back and forth to school. We have had 700 kids channeled down one street, and I don't care what color the kids are or what color the property owners are, you aren't going to make this without trouble, and we have had it. Going back to 1966 we have had incidents, and if you will check the police records you will find that guns and dogs were brought into play against the children and property owners. We have had scooter patrols, and after I got charged with this area at least one patrol car on duty morning and night. Our administrators would escort the kids halfway home, and we [1867] still had problems. We asked for the primary unit to reduce the number of youngsters that would have

to run the gauntlet. The Parks and Recreation Commission denied the request on the grounds that they were short of park area. We have attempted to find some other solution to this problem.

One of the proposals was bussing a portion of these youngsters to one of the schools I mentioned, and that was flatly refused by the residents of Parkside. Well, this is rough history.

Finally, to reduce the number of youngsters that would have to run the gauntlet, we have agreed to bus the primary grades while we were trying to find some permanent solution to this problem. The Parkside people themselves negotiated with the DSR to double that run, because it only took five minutes, and at no additional cost the DSR then transported the remainder of the youngsters.

Q. You say cost?

A. To the Board of Education or anybody else.

Q. The Board is paying for that transportation?

A. The Board is paying for the transportation, but on the basis of one run.

***

[1871] Q. Did you ever have any supervision of the Northeastern School, in that area?

A. I did, but that was about '64, my last association with Northeastern.

Q. At your deposition November 3, 1970 – page 21 – you testified as follows:

"The reason we discontinued that was because under that policy practically every white kid in Northeastern got out."

My question following that was:

"Where did they go to?

"Answer: Well, at that time our high schools weren't full, practically any school at that time.

"Question: Was there any school that most of them ended up in?

"Answer: Probably Osborn and Denby primarily."

Do you recall that testimony, sir?

A. I do, and I will have to take back what I said when the transfer policy was first initiated there were not the restrictions on it, but they were put on when this occurred.

Q. I thought we were misunderstanding each other.

A. That's right.

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[1881] REDIRECT EXAMINATION BY MR. LUCAS

***

Q. (By Mr. Lucas, continuing) Have transfers been granted under either transfer policy in your district when a student assigns a racial reason for that transfer, in 1970?

A. Repeat the question.

Q. In your region have you granted transfers when a student or his parents indicate that the reason for requesting a transfer is because of race?

A. Absolutely not.

THE COURT: We will take our recess at this time.

MR. LUCAS: All right, your Honor. I will show counsel these documents. (A recess was taken.)

[1882] MR. BUSHNELL: I have no objection, if the Court please, to this proposed exhibit but I would like it identified by Doctor Edmundson. I assume you are going to examine him on them?

MR. LUCAS: Yes.

MR. BUSHNELL: Exhibit what?

MR. LUCAS: 168.

Your Honor, I would like to make these a collective exhibit and we will put a cover sheet on them and identify them at a later time.

Q. (By Mr. Lucas) Doctor Edmundson, I show you a collective exhibit of transfer forms marked Plaintiff's Exhibit 168. Directing your attention to the transfer permit and application, the application is entitled Pupil Adjustment Application. That is the form used in September of 1970?

A. Yes.

Q. Form 36 I believe, is that correct?

A. Right.

Q. The green sheet on top is entitled Transfer Permit, that is the same form you previously had been using with all transfers?

A. Right. That is the actual permit for the youngster to transfer.

MR. LUCAS: Unless some counsel insists on using the names of the pupils they will be available in the record, I'd just as soon not state them.

[1883] MR. BUSHNELL: I have no objection to the names being stated. It might well identify them for the record.

MR. LUCAS: Okay. If there is no objection to it I will do that.

Q. (By Mr. Lucas) Would you read the name of the student?

A. (Name expunged.)

Q. What school does it show he presently attends?

A. At that time it was Kettering?

Q. What is the date of the application of the Pupil Adjustment Form?

A. 9-28-70.

Q. Is Kettering a predominantly black school?

A. Yes, it is.

Q. What is the reason shown on the form for requesting the transfer?

A. The Court is not a very good place to eat your words. "Racial problems."

Q. This isn't signed by you?

A. No it is not.

Q. Signed by someone acting for you?

A. Signed by the region assistant Mr. Chester Stewart.

Q. All right. The green form on top entitled Transfer Permit, it does bear your typed signature, is that correct?

A. Yes, it is.

[1884] Q. The transfer is from Kettering to Denby?

A. Yes.

Q. Denby is a predominantly white school, I believe you testified?

A. Yes, it is.

Q. Directing your attention to transfer application, Pupil Adjustment Application also dated September 28, 1970, would you give us the name of the applicant and the present school attendance?

A. (Name expunged.) At that time attending Kettering.

Q. What grade was he in?

A. 12B.

Q. In other words, he was a senior student. Does the "B" refer to the first semester?

A. First semester of the 12th year.

Q. What reason is indicated on that form?

A. "Racial problems."

Q. What school was he assigned to?

A. Denby.

Q. This also does not bear your signature but the signature of your assistant, is that correct?

A. That is correct.

Q. And the Transfer Permit on the top attached to it indicating Transfer Approval has your typed signature?

A. That is correct.

Q. Do you actually see these yourself personally?

[1885] A. No, I do not, ordinarily.

Q. Directing your attention to a Form 36, Pupil Adjustment Application –

THE COURT: Just a minute, Mr. Lucas.

MR. LUCAS: Yes.

THE COURT: Gentlemen, I seriously question the propriety or need for having the names mentioned. The records are available if you wish them for your purposes. These people are children that we are talking about. Unless it is of some moment to the case I don't see –

MR. BUSHNELL: It is of no moment to the case, my only thought was it would identify them in the transcript so we don't lose any with the exhibits. It was a housekeeping reaction. I don't ask that the names be read as such.

THE COURT: You can privately note the names because you have the exhibits.

MR. LUCAS: That was my suggestion, your Honor.

THE COURT: Unless there is some objection I'm going to ask the reporter to expunge from the record any reference to the students' names last mentioned here. I think there are two in number down to this point.

MR. LUCAS: We so move.

MR. BUSHNELL: I would have no objection [1886] to that.

MR. YOUNG: No objection.

MR. SACHS: No objection.

MR. RITCHIE: No objection, your Honor.

THE COURT: Mr. Reporter, just cross those names out entirely. Do not reproduce them.

MR. BUSHNELL: I simply note to the Court that at least in system this is not the sensitive question that it might appear to be and probably appears to be someone unfamiliar with the operations of the Detroit School System. These kind of things happen all the time. The students and family indeed are noted, and not infrequently they wind up in Recorder's Court and there it does become a matter of public record, but I have no objection to this action.

[1887] Q. (By Mr. Lucas) Just omitting the name, I think this particular application bears a stamped number, does it not, sir?

A. Yes, it does.

Q. And what is that number?

A. That would have indicated the number of the applications – as they come in, they would be stamped and numbered. These, as you note, are September applications and we had just instituted this procedure, and we had a lot of problems in trying to work it out so that it operated properly.

Q. Just refer to the number rather than the name of the student. Then in this particular application what is that number?

A. 55.

Q. And what is the school of attendance?

A. Butzel, Grade 7.

Q. To what school was the transfer sought?

A. The transfer was requested to Clark, which we could not permit because Clark was overcrowded. He was transferred to Jackson Junior High.

Q. And what is the reason stated?

A. Repeated beatings, racial in origin. Wants Clark School if at all possible.

Q. What does the comment of the administrator show?

A. Refuses a Region 8 junior high school placement. Feels [1888] harassment was racial in nature. Butzel states that his family has not been most cooperative and deserves a break.

Q. Was that transfer approved?

A. Yes.

Q. Again not by you personally?

A. Right. I would like to, if I may, proceed. The procedure that was adopted included a procedure that in a case such as this where a youngster from another region was requesting a transfer, that the home region examine the case and make certain that every possible effort had been made to achieve an adjustment and make a recommendation before we could act on it. The earlier ones were not processed in this manner.

Q. By earlier ones, you mean the previous year?

A. No, the ones that we already referred to in this testimony.

Q. Was the process the same in previous years?

A. No.

Q. If you were going from one region to another, there was not first a determination within the sending region that the problem could not be resolved?

A. That had never been done as a matter of policy. It had been done in some instances.

Q. In other words, it may have been a practice at some particular individual –

[1889] A. Yes, but in this case the sending school indicates – may I read the statement into the record?

Q. Certainly. The title of the form is what?

A. It is a Form 35. It is a School Report of Pupil Adjustment Application.

Q. This would have been filled out in the sending region or sending school?

A. The sending school. Napoleon Jordan, who was, I believe, the assistant principal at Butzel, and he states the nature of the problem: this student has been physically assaulted without apparent provocation in the building during passing of classes and on the school grounds and nearby streets after dismissal. Attempted adjustment: the staff has been asked to provide the student with protective surveillance as he moved about the building. On occasion administrators escorted him part of the way home. Recommendation: I recommended that the student be transferred. I would also like to state that the father has made an honest effort to assist us in maintaining his son's enrollment in the school.

Q. Is Region 8 the location of Butzel School?

A. It is.

Q. Do you know what high schools are in Region 8?

A. King, Kettering, and Southeastern.

Q. Are those predominantly black schools?

[1890] A. Yes, they are.

Q. And I take it the reason on the front stated is that he would not accept a transfer into Region 8 junior high?

A. That's correct, right.

Q. You say the other two forms we have identified do not have this sort of supporting document, is that right?

A. No. Early in the school year we had just instituted the procedure. There had been shifts in regional boundaries. We were having all kinds of problems getting organized and getting under way, and we weren't able to carry out the procedures as they were established in all locations and get the kids into school.

Q. Now, this form would be filled out only when there was a transfer between regions, or would it be filled out at each of the schools where the student was actually in attendance?

A. As a matter of policy it would be filled out in each case where a student was requesting a transfer between schools.

Q. There is another form attached here. Would you read that, please, without the student's name, please?

A. This is not titled. It is a form letter from Mr. Foster, Region Assistants, Region 8, indicating the attached to our Forms 35 and 36. The above-named student. The adjustment offered by the Region 8 office at all Region 8 junior high schools has been reduced. Assignment to the Clark School in [1891] your region has been requested by the parent or legal guardian. Then it says questions regarding a disposition of this request should be directed to the Region 7 office.

Q. Directing your attention to an application - I'm trying to find a date on this application. It is stamped Received August 10, 1970. The administrator of school units, is that correct?

A. Yes, sir. That is right.

Q. And what number does it bear?

A. This number would have been applied in Miss McCarthy's office, 40622, and that would be a serial number that relates to all the applications received in her office.

Q. And is this on the old form?

A. Yes, the old form, Form 32.

MR. BUSHNELL: What is the date, please?

A. There is not date on the form. A transfer was granted dated September 9th.

MR. BUSHNELL: '70?

A. '70.

Q. (By Mr. Lucas) And does the Form 32 used in this particular instance contain a racial designation?

A. Yes, it does.

Q. And what box is checked on this one?

A. White.

[1892] Q. And what is the present school of attendance shown?

A. Denby.

Q. Would you re-examine the form? The school attended at the time of the application.

A. At the time of the application it was Kettering.

Q. All right, and what grade?

A. 11-B

Q. And what school did the applicant seek?

A. Requested Denby.

Q. Would you read the letter attached in support omitting the names, please?

A. This letter is addressed to Denby Superintendent for Administration of Schools.

Q. That would be Central Office?

A. Right. It says: "This fall I'm requesting my daughter be transferred to Denby Senior High School. She has been harassed and bothered by certain groups of students upon entering and leaving the school building of which she is now attending on several occasions. I do not believe it is fair to some students to be allowed to enter another school under an aunt's or an uncle's address with whom they are not living just so they can be granted a transfer. I know of specific cases in which [1893] this has happened, and they were not investigated. It is also wrong to keep a student out of school hoping these incidents of trouble will stop

when, in effect, they will start all over again. You begin to wonder if your son or daughter will come across real danger from these agitators. I therefore am hoping to receive a transfer to Denby for her not under false pretenses but when I have really been honest with the truth."

Q. Is the problem of using relatives' and other addresses a continuing one for Detroit administrators?

A. Yes, it is.

Q. Is this transfer granted from Kettering to Denby?

A. Yes.

Q. It bears your typed signature, but not your personal signature?

A. Right.

Q. Directing your attention to a pupil adjustment application, the current Form 36, it is dated Received October 2nd, 1970. Does it have a handwritten number on there?

A. Handwritten number 25.

Q. What was the school of present attendance of the student applicant?

A. Cleveland.

[1894] Q. What grade?

A. 9-B.

Q. To where was the student assigned?

A. She was assigned to Finney.

Q. All right, and what was the request?

A. There is no indication of the basis for request on this application.

Q. What is the comment?

A. The comment is that Susan is asking to attend Finney since we do not have available space at Osborn. We are referring this request to Mr. Stewart in the Region 7 office for possible adjustment. There is no indication as to who made that comment.

[1895] Q. All right, is there another handwritten form attached to that?

A. There is.

Q. Does it state a reason for the same pupil?

A. Yes, the reason stated for the request on this form is that, "Susan is harassed by the colored children, both boys and girls and they make all kinds of lewd remarks and they burned her hair in one incident. They follow her home from school and they get into the house and they - and they tried to get into the house. She is terrified of these children and will not go back to Cleveland. I have reported all of these incidents to the police and the Women's Division. When I went to the school today to get this form filled out two colored boys stuck their heads out of a teacher's classroom and had shouted lewd obscenities at me as I was walking into the school. I went to the classroom and told their teacher and had these boys taken to the assistant principal's office and he had expelled one of the boys till he brings his mother back to school on Monday. If these children are allowed to do these things to adults can you imagine what our children have to be subjected to while trying to get an education.

"Our daughter loves school and is an honor student, so i beg you to please transfer her to a school like Finney where she may continue her education without harassment and I may be able to have some consolation knowing she will be [1896] safe on her way to and from school. Thank you for your cooperation.

"I sincerely appreciate all you may do for us to further our daughter's education.

"I remain sincerely yours."

Q. Was this transfer granted from Cleveland to Finney?

A. It was.

Q. And the date?

A. October 5th.

Q. 1970?

A. Yes. Again at the request of the sending school, the principal of the sending school.

Q. Is Cleveland in your region?

A. No, it's not.

Q. What region is it in?

A. Region 6.

Q. I show you another form Pupil Adjustment Application. It is noted received in the region office on October 6, 1970. Does it bear a number also?

A. Number 39.

Q. What was the school of attendance of the student at that time?

A. Jackson.

Q. What grade?

A. 8B.

[1897] Q. What is the comment that is shown on the form?

A. (Reading.)

"Please join with the many students and parents at Jackson who are working with the school staff to make the school an excellent experience for children. There is no available space at Goodale."

Q. Does that indicate that the applicant sought to be transferred to Goodale?

A. It would indicate so but this comment was made by Mr. Stewart who signed the request and at that time it was not approved.

Q. Is there a letter attached stating the reason?

A. There is a letter to Mr. Christopherson, principal at Jackson dated September 24th.

Q. 1970?

A. 1970. "On Tuesday, September 22, 1970, my daughter Beverly, an 8th grade student of your junior high school was leaving the girl's restroom when she was attacked and set upon by four colored students who administered a severe beating to my daughter without any cause or provocation. My daughter is unable to attend school because she is badly bruised and beaten and one eye has been severely injured.

"This attack was entirely unprovoked and I am satisfied it was purely a racial incident. I am greatly [1898] concerned about my

daugher's health and well being if she continues being a student in your school.

"I, therefore, respectfully request my daughter Beverly be transferred to Goodale School located at 9835 Dickerson, Detroit, Michigan, the nearest school to my home."

A. The transfer you say was originally refused?

A. That is right.

Q. Does it have two slips on top?

A. It does.

Q. There are merely duplicates, is that correct?

A. Apparently, yes. Since it was within our region a copy would ordinarily have gone to the sending region had she been from another region but it was not sent.

Q. What is stated on the face of the Transfer Permit?

A. "This permit supersedes the decision dated October 6, 1970 which refers to the initial disapproval."

Q. This transfer was made from where?

A. From Jackson to Finney.

Q. Is that correct? Do you want to recheck that, please?

A. Pardon me, Burbank, Jackson to Burbank. I beg your pardon.

Q. Does it indicate any reason for overruling the recommendation of Mr. Stewart?

A. The recommendation of the principal - it wasn't an overruling [1899] of Mr. Stewart.

Q. It supersedes his earlier decision?

A. It supersedes his earlier decision.

Q. This again bears your typed signature?

A. Right.

Q. Directing your attention to Pupil Transfer Request stamped received June 29, 1970, does it bear a number also?

A. Yes. This again would be the Central Office Administration of School Units stamped 40472.

Q. Your stamp numbers are considerably lower than that number?

A. Yes.

Q. That is how you determine it is a central office stamp?

A. It is stamped here Administration of School Units.

Q. That would not be your stamp?

A. Not our stamp.

Q. What was the school of attendance of that student at the time of the application?

A. Kettering Senior High School.

Q. Is that on an old form also?

A. Yes, Form 32.

Q. Does it indicate the race of the student?

A. Yes, it does - white.

Q. To what school is transfer requested?

A. Denby.

[1900] Q. Was the transfer approved?

A. Yes, it was.

Q. There is a typed statement attached to this from the parent, is that correct, dated June 17, 1970?

A. Yes.

Q. Does it indicate more than one student is involved in the applications?

A. it does.

Q. Are there other applications attached to this one?

A. Yes.

Q. Are they from the same family?

A. Yes.

Q. Without reading the two page letter, does it generally indicate the same type of incidents described in the other letter, racial in nature? The entire document would be an exhibit.

A. Yes, it indicates the same type of occurrences.

Q. Is there a stamp on the back of that indicating when it was recieved in your region?

A. Yes, there are two different stamps. Apparently it was received first on July 2nd and some information was missing and it was returned and received again on July 14th. The same dates are on both applications.

***

[2042] JOHN W. PORTER

was called as a witness on behalf of Plaintiffs and, being first duly sworn, testified as follows:

***

Q. What is your occupation, Dr. Porter?

A. I am State Superintendent of Public Instructions in Michigan.

Q. How long have you held that position, sir?

A. Since October, 1969.

Q. What position did you hold prior to that time?

A. Associate Superintendent in the Department of Education for Higher Education.

Q. Is your position elective or appointed?

A. Appointed by the State Board of Education, which is elected.

Q. What are your duties?

A. They are twofold: I am chief executive officer of the Department of Education, which is one of the 19 state departments of government responsible for supervision of elementary and secondary education, adult education and planning coordination of higher education and, secondly, I am Chairman of the State Board of Education for policy in education.

[2043] Q. What is your personal educational background?

A. My public education was received in Fort Wayne, Indiana. I had a Bachelor of Arts Degree from Albion College, a private college in Michigan. I have a Political Science Master's Degree from Michigan State University and a PhD. in administration in higher education at Michigan State University.

Q. What is the budget in terms of responsibility for local school districts of the State Department of Education for this year?

A. Are you referring to the budget –

MR. BUSHNELL: If the Court please, I don't understand the question and I sense Doctor Porter doesn't, either. This is not how education is financed in Michigan.

A. Could you rephrase it?

Q. (By Mr. Lucas) What was the amount of state aid for public education?

A. The amount of aid for 1970-71 was approximately three-quarters of a billion dollars.

MR. BUSHNELL: Billion?

A. Billion. That is state aid.

Q. (By Mr. Lucas) This is money given directly to local school districts and intermediate school districts?

A. That is money given directly to the local school districts, a majority of it. There is a lump sum grant for intermediate school districts separate from that amount. The money to [2044] local school districts is based upon a state aid formula, the money to intermediate school districts is based upon a different disbursement factor.

Q. Would you very briefly describe the intermediate school district and its relationship first with the State Board and then in turn with the local school districts?

A. The intermediate school district, the intermediary level of education in the state, basically it performs regional services for the State Department of Education in terms of collecting enrollment information, providing special education services, collecting certain forms that are required by the state. Intermediate school boards are created through local initiative based upon local school district board members.

There is no direct responsibility and supervision between the state education office, the intermediate school district and the local school boards. In other words, the State Department of Education supervises to the extent that the Constitution calls for

that in the local school district operations and to date has not done this through intermediate school districts.

Q. Do the intermediate school districts coincide with the county boundaries or do they sometimes extend across county lines?

A. Intermediate school districts do not in most instances coincide with county boundaries. Several years ago, in fact 1955, this [2045] was changed. Intermediate school district boundaries now coincide with the school district boundaries which in most instances, except for a few cases they do not follow county lines. We now have 59 intermediate school districts and 83 counties. That would give you some idea of the discrepancy.

Q. Is the Wayne County intermediate district coterminus with Wayne County or does it extend across into other counties?

A. The boundaries are basically coterminus, a couple of isolated instances whereby one area, one school district which is part of a community college that is located in Wayne County, the school district buttresses into Oakland County. We have a couple of isolated cases like that but basically it follows the county line.

Q. Does the State Department of Education have a division funded in part by federal funds dealing with equal educational opportunity, I think it is sometimes called Title 4?

A. We do have an Office of Equal Educational Opportunity.

Q. Is it funded in part by Title 4 of the Civil Rights Act of 1964?

A. Seventy-five per cent of the office is funded by Title 4 of the Civil Rights Act of 1964.

Q. What is its function in the State Department?

A. That office is responsible for identifying, first of all, those school districts that have imbalance as far as racial enrollments are concerned. To date we have identified, this [2046] is not part of the public policy of the State Board, but we have identified 38 school districts that are administratively imbalanced in the schools based upon this factor that if more than 50 per cent of the students are of a minority extraction that is considered to be imbalance and there are 38 school districts out of some 617.

Q. I think I know what you mean, Doctor, but for clarification you mean more than 50 per cent of the students in a particular school or in a district?

A. In a school.

Q. Or entire district?

A. In a particular school.

Q. What is the responsibility of this division of the State Department with respect to working with local school districts?

A. The responsibility of the office is to work cooperatively. There are no supervisory mandates, to work cooperatively with these 38 school districts to develop desegregation plans so that the racial imbalance might be improved.

Q. Are there some levels of funding from the Federal Government to local school districts with respect to Title 4 or is this level funding directed toward the intermediate district?

A. Any funding to date from the Federal Government for desegregation purposes has been directly to local school districts when such school districts were under court order or such districts [2047] were under some mandate legislatively.

We have not had any cases like that in Michigan. There have been a number in the southern states. We do, however, anticipate if the current legislation from the Nixon administration is passed that 1.5 billion dollars for desegregation is passed, that Michigan would be entitled to about 40 million dollars.

Q. That is a special assistance fund?

A. Yes, and we are in the process now of developing some tentative guidelines that could be approved by the Federal Government to implement that new statute if it is enacted.

Q. Were you aware, Doctor, that Title 4 project, similar to that section of the State Department was funded through the Wayne County intermediate school district and worked with the local districts within the Wayne County intermediate district? Can you tell us what that project was?

A. I do not – that project is one that I did not give you any information on.

Q. Do you know what the project is?

A. Well, the project basically would be to provide assistance in regard to desegregation but we have not specifically monitored or obtained any information in regard to the Wayne Intermediate School Project.

Q. Doctor Porter, I direct your attention to the minutes of the [2048] Detroit Board of Education, 1969-70, in particular the meeting of May 26, 1970 which shows on page 702 of that meeting. Contained therein is a statement, "State of Michigan, State Board of Education, Statement of School Integration." Would you examine that please, sir?

(Handing the witness a document.)

A. Yes.

Q. Would you read the first two paragraphs of that statement itself?

MR. BUSHNELL: Do you mind if I take a look at it, if the Court please?

MR. KRASICKY: I think we should see it.

MR. LUCAS: Certainly.

(Handing the document to counsel.)

THE COURT: What is the book?

MR. LUCAS: The minutes of the Board, your Honor.

MR. BUSHNELL: Bound volume of the minutes of proceedings of the Board of Education, 1969-1970.

MR. KRASICKY: Of Detroit.

THE COURT: Of Detroit?

MR. BUSHNELL: Yes.

I would ask Doctor Porter to read the entire statement of the State Board of Education as reprinted [2049] in the minutes of the Detroit Board of Education.

MR. LUCAS: That is fine.

THE COURT: How long is it?

MR. BUSHNELL: Might I ask for the record that Doctor Porter identify what this is that he is reading.

MR. KRASICKY: It's four paragraphs long.

A. The statement that I have been requested to read by counsel, the statement that the State Board of Education adopted May 13, 1970, following several meetings with the Detroit Board of Education, their counsel, regarding the plan of the Detroit Public Schools to provide for regional boards of education. The statement is based upon a previous statement by the State Board of Education and the Michigan Civil Rights Commission which was adopted in 1966. The statement reads as follows:

"The State Board of Education on April 23, 1966, adopted a joint policy statement with the Michigan Civil Rights Commission which directed local school boards to consider the factor of the racial balance and along with other educational considerations in making decisions about selection of new school sites, expansion of present facility, reorganization of school attendance districts and the transfer of pupils from overcrowded facilities.

"Each of these situations according to the policy statement presents an opportunity for integration. The [2050] recent decisions of the school districts to address themselves to the issue of racial isolation in schools is encouraging.

"An effort to provide equality of educational opportunity, the Detroit Board of Education has taken an initial step to address itself to the many-faceted problems of racial segregation and the barriers which it creates.

"The Detroit plan with its strength and weaknesses is an effort to solve the problem. The path to quality educational opportunity is neither smooth nor precisely marked and merely assigning students to different schools in an effort to bring about racial balance in those schools will be a meaningless gesture unless immediate steps are taken to provide additional services in improved programs to insure a balance quality educational attainment as well as a balanced racial composition.

"Unless this factor is given top priority school districts addressing themselves to racial integration simply by providing racial balance can probably expect increased rather than decreased tensions.

"Consequently the Detroit Board of Education will not automatically make the Detroit School System better; however, with the support of students, teachers and parents and with the recognition that the students, teachers and parents, and with the recognition that the decision hopefully [205l] represents a step toward quality education for all students, such decisions can be considered fundamental. Actions taken by Michigan school districts to reduce the harmful educational effects of racial isolation are consistent with the equal educational opportunity position of the State Board of Education.

"Once such actions are taken by duly constituted authorities public support is vital to their success. The State Board of Education urges public support of conscious and constructive efforts to achieve racial integration in the schools."

Q. Is the date on there, Doctor?

A. May 13, 1970.

Q. And that was directed to an Arpil 7th plan and it is now adopted by the Board?

A. That was directed to the principal features of the April 7th plan as adopted by the Detroit Board.

Q. Doctor, the statement makes reference to a 1966 policy statement directing local Boards of Education to consider the fact of racial balance along with other educational considerations in making decisions about selections of new school sites, is that correct?

A. That's correct.

Q. And expansion of the present existing facilities?

A. I'm not certain.

Q. Well, let me just give this to you and let you make reference to it. I think it is the first paragraph.

A. Yes, not the expansion. That term refers to when a school district intends to provide for additional students, whether or not they should add to the existing building which might cause isolation and/or whether they ought to consider constructing another building.

Q. In another location?

A. In another location, right.

Q. Now, it also says reorganization of school attendance [2053] district. Are you talking within a particular school district, Doctor, or are you talking about between two separate school districts?

A. The 1966 statement refers to the reorganization of school attendance districts, and this refers to attendance within a district.

Q. That would be changing zone lines for particular schools? Is that what that means?

A. That's right.

Q. It also deals with the transfer of pupils from overcrowded facilities?

A. Yes.

Q. Doctor, directing your attention to Plaintiffs' Exhibit 70, which is a school planning handbook, Michigan Department of Education, page 15 – it has previously been admitted into evidence – would you read the paragraph which I have marked starting with "Care and Site Selection"?

MR. BUSHNELL: Again, if the Court please, I would like the opportunity to take a look at this title page before Dr. Porter begins to read, marked paragraphs.

MR. KRASICKY: If the Court please, this has already been read into the record at least once, this particular paragraph. Now, what is the purpose in [2054] accumulating this paragraph in the record?

THE COURT: That has been read in the record?

MR. LUCAS: Yes, sir. Dr. Foster, our expert, read that paragraph.

THE COURT: Then let the witness read it to himself.

MR. LUCAS: Yes, that was my purpose.

THE COURT: I see. All right.

MR. BUSHNELL: While you are reading it to yourself, Doctor, I suggest you might want to read some other paragraphs in there, too.

A. I'm well aware of the statement.

Q. (By Mr. Lucas, continuing) This booklet is dated 1970, and it indicates a revision, is that correct?

A. That's correct.

Q. Does the paragraph I directed your attention to deal with consideration of racial segregation and housing patterns in the location of school sites?

A. That's correct.

Q. Is that consistent with the 1966 policy statement with respect to location of new schools, site selection?

A. That's correct.

Q. Dr. Porter, are –

[2055] MR. RITCHIE: Mr. Lucas, could you identify the page and the paragraph?

MR. LUCAS: Page 15, I believe.

MR. RITCHIE: Thank you.

Q. (By Mr. Lucas, continuing) Dr. Porter, I'm sure you are familiar with Act 244 and Act 48 of the State Legislature.

A. Yes.

Q. What is the responsibility of the State Board of Education with respect to drawing attendance or regional boundaries for the Detroit Board of Education under Act 48?

A. The State Board of Education had no direct involvement in the drawing of boundaries.

Q. Does it have responsibility in the future with respect to Act 48?

A. It does have, since the Act indicates that after each decennial census boundary lines for any school district that has 100,000 population must be redrawn, and if the constituent representatives of the regional boards are not able to agree upon some boundaries that are consistent with proportionate populations, the State Board of Education may draw such boundaries. I assume therefore that the State Board would have no direct involvement in this until the 1980 decennial census, odd year, which would be 1981.

Q. Do you know whether the Commission that drew the present [2056] boundaries had the 1970 census figures in Detroit available to them at that time, Doctor?

A. I can't say, because there are two different Acts, Mr. Lucas. The first Act required the Detroit Board of Education to undertake an exhaustive plan of regionalization, and then, as the Court knows, the law was amended in 1970 and a three-member commission was to be appointed if the legislature could not draw boundaries that were approved by the Superintendent of Public Instruction. The legislature did not act. I was not able to act. A three-member commission was appointed by the Governor and it did proceed to carry out this mission.

MR. KRASICKY: Your Honor, I think the record shows that Mr. Lucas was able to get the back tracts of the 1970 census just in time to put the evidence in in regard to the City of Detroit population which was sometime in April 1971, and this body acted in 1970.

MR. LUCAS: The only thing I'm trying to establish is exactly that point.

MR. KRASICKY: Obviously they didn't have the census figures, because they didn't become available until 1971, and we might state for the record that they were available to some people but not all epople.

THE COURT: I don't think there is any [2057] dispute about the fact that the census figures were not available in 1970.

MR. LUCAS: That's all I was trying to establish, your Honor.

THE COURT: I don't think there is any contest over that fact.

Q. (By Mr. Lucas, continuing) Dr. Porter, I direct your attention to the Michigan School Finance Study, Michigan Department of Education, 1968 entitled "School Finance and Educational Opportunity in Michigan." Directing your attention to page 11, which deals with the section entitled "Responsibility for Providing Education," would you read beginning with the paragraph at the top of page 11? Read the statements contained therein, and then I would like to ask you a question, sir.

A. "Government is involved – "

Q. (Interposing) You may read that to yourself.

A. All right.

Q. The report states, Doctor, that the governmental provision of education makes it possible to have a society in which young people of different backgrounds can work and play together, thus strengthening the cohesiveness of the total society. Governmental provision of schools in which children of different backgrounds may be taught the elememts of a [2058] common social tradition has long been an American ideal. Then it goes on to quote James B. Conant,

The American High School Today. Are you familiar with Dr. Conant's work?

A. Yes.

Q. Is he a recognized leader in public education?

A. Yes, I would say so.

Q. It quotes Conant as saying, "I believe it accurate to state that a high school accommodating – "

MR. KRASICKY: Just a moment. I object to Mr. Lucas testifying to views of Mr. Thomas and to the views of Dr. Conant. Now, I don't know what he is trying to do. He may be asking for an opinion of Dr. Porter. But, it seems to me this is highly improper. This is the State's chief educational officer. He knows about the way things have been done. It is proper to ask him about those things, but not to comment on what Dr. Conant or Mr. Thomas said.

THE COURT: Well, the witness has conceded that Dr. Conant is a recognized authority in this field, and I assume that Mr. Lucas may ask him whether he agrees with some of his views on education. Is that what you were about to do?

MR. LUCAS: Yes.

MR. BUSHNELL: Might I ask that the [2059] Thomas report be marked as an exhibit and introduced if it hasn't already been so?

MR. LUCAS: I don't intend to offer the entire report. It is a rather bulky document. If you want to introduce part of it, coun-

sel, you are free to. But, I don't intend to offer it at this time, your Honor.

THE COURT: Proceed with your questions.

Q. (By Mr. Lucas) The quote from James B. Conant, "I believe it accurate to state that a high school accommodating all of the young of a community is typical of American public education. I think it is safe to say that a comprehensive high school is characteristic of our society, and further that it has come into being because of our economic history and our devotion to the ideals of equality of opportunity and equality of status." Would you agree with that statement, Doctor?

A. Yes. I think that statement in terms of equality of opportunity is an accurate reflection of the role of the comprehensive high school.

Q. Doctor, the study, the school finance study, this does not quote from Dr. Conant entirely – "This financial study will touch only briefly on problems of racial segregation in the schools. It is apparent that the above justification for governmental action in education requires that great [2060] effort be made to provide it in an integrated setting." Do you agree with that statement, Doctor?

A. To the extent that such integrated setting improves the quality of the instruction, I agree with that statement.

Q. Doctor, directing your attention to page 61 of the School Finance Study, there is a table entitled 2-16, percent of schools within city falling above or below city sixth grade achievement norm by racial composition of school. Can you read the figures for us, please, with respect to the City of Detroit?

A. Aloud?

Q. Yes. Let me get the records. The date of the study if – all I have here is 1968.

MR. BUSHNELL: The date of the figures, please. You know what we are asking for.

MR. LUCAS: I said all I have, counsel, is 1968, the date of the study. I haven't checked the appendices. It may have the date of the figures.

MR. BUSHNELL: We would object to any reference to figures that aren't pinpointed in time as being irrelevant and immaterial.

Q. (By Mr. Lucas, continuing) Let me ask you to read the preamble first of the tables which refers to this particular table starting with, "While this study . .," Doctor. [2061]

A. Page 60 of the School Finance Study for Michigan.

"While this study was not designed to examine individual student attitudes in their relationship to achievement, it is interesting to look at some selected background characteristics in achievement. As Table 2-14 shows, there exists in Michigan a strong relationship between race and achievement. The latter measured in this table is in terms of non-promotion or retention at a given grade level. The higher their percentage of Negroes in a school, the greater is the percentage of students either failing one or more subjects or being retained at that grade level for another year. Tables 2-15 and 2-16 further demonstrate this relationship. Looking at sixth grade achievement levels in Detroit, Grand Rapids and Flint, the higher the percentage of Negroes in schools, the greater the probability that the school will be below the city achievement average."

Q. Now, directing you to the Table 2-16 dealing with achievement at sixth grade, would you give us what the table shows for the City of Detroit, please?

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[2064] . . .

A. Table2-16, the title of the table, "Percent of Schools Within City Falling Above or Below City Sixth Grade Achievement Norm by Racial Composition of School." Detroit, 10 percent Negro, 9 percent below, 91 percent equal or above. 11 to 50 percent Negro, 44 percent below, 57 percent equal or above. 51 to 89 percent Negro, 68 percent below, 32 percent equal or above. 90 to 100 percent Negro, 94 percent below, 7 percent equal or above.

Q. (By Mr. Lucas, continuing) Thank you, Doctor.

MR. BUSHNELL: What page is that table on?

MR. LUCAS: 61. He read first from page 60, and then the table appears on 61.

[2065] Q. (By Mr. Lucas) Dr. Porter, does the State pay the cost of pupil transportation in the State of Michigan?

A. The State pays roughly 75 percent of the cost. Last year the appropriation was $29 million.

Q. Do you know what percent of the school children in the State of Michigan are transported to the school at public expense?

A. Yes, I do. 40 percent of all students in Michigan are transported. That equates out to about 833,000 students last year.

Q. Dr. Porter, is there some formula in terms of distance which makes a child eligible for transportation that would be aided by the state?

A. Yes. It is a very complicated formula that 197 computations, and we are in the process right now of reducing this—

Q. (Interposing) You mean the financial formula is complicated. But, in terms of distance from his home to the school—

A. A mile and a half outside the city limits. Until this year the legislature amended the Act based upon the recommendations of the State Board of Education to allow for in-city transportation which we had never had before. The legislature did not appropriate funds for that. So, now the funds that are now used are basically for rural areas and suburban [2066] areas where the students live a mile and a half from the school.

Q. When you say "city," is there some limitation? For instance, would Grosse Pointe, Harper Woods, areas like that that surround the City of Detroit, are they eligible for transportation?

A. In the in-city. But, if the students come across the city boundary lines they live more than a mile and a half, which is quite prevalent throughout the state, then they are eligible for the funds.

Q. Well, I think my question may have been confusing. Is there some type of city—is it just anyplace incorporated as a city that is differentiated from the rural areas, or certain cities elegible for this state aid at the present time and receive the funds—

THE COURT: I think what Mr. Lucas is trying to get at is whether under the old practice whether any city has ceased state aid for transportation within the city.

A. Yes, we have a number of instances where the city would be receiving aid for transportation, because the law says that if the bus in order to get the students to the school crosses outside of the city boundary, the city is then eligible for aid, and we, and we have a number of instances where [2067] that exists.

THE COURT: In other words, where the student originates his ride outside the city limits transportation is assisted?

A. That's right, or where the student lives in the city but the bus has to go outside of the city and come back he is also eligible. This, however, does not negate local city officials, school board officials from providing transportation. There is no prohibition against that.

Q. (By Mr. Lucas) You said the legislature changed the law but didn't provide the money. Now, they are eligible for state aid but it is unfunded now, is that what you are saying?

A. The law was changed last year to permit in-city bus transportation but in changing the law the legislature said our department had to disburse the funds to the eligible existing areas which meant that since they did not increase the amount of funds appropriated we could not provide for in-city transportation.

Q. If a child lives in the city and lives more than a mile and a half from the school to which he is assigned he may not receive the state aid because it is unfunded at the present time?

A. That is correct.

Q. But if he lives the same distance away and lived outside the City of Detroit, for example, then he could receive state aide?

A. That is correct, or any other area.

[2068] Q. I'm sorry, Doctor, I believe you gave me the amount for transportation—

A. $29,000,000.00.

Q. That is just the state portion, is that correct?

A. Yes.

Q. Directing your attention again to the School Financial and Educational Opportunity Study in 1968-1969, tell me the latest figures for transportation for 1966-67, at page 172. What is the figure shown?

MR. KRASICKY: I will object to the relevancy of this. The Court has before it a very important question as to segregation of this school district. Doctor Porter testified the amount of funds available for the current year for bus transportation and now we are going to the amount for '66. I suppose we could ask about '60 and '55 and '40. What is the relevancy to the issues before this Court, if the Court please?

MR. LUCAS: Your Honor, taking that as an objection I would like to respond. I think first of all one of the issues in the case may be that degree of responsibility, the degree of participation in local school affairs by the state. I think the State Constitution makes education the responsibility of the state and the State Department's role and its authority to act I think is in issue in this litigation.

[2069] I think also in terms of feasibility, and we won't explore this beyond this table, in terms of feasibility if the Court will recall there were some objections to the April 7th Plan about bussing and I think some testimony from Doctor Drachler about how much the School Board has spent on bussing, something like a million dollars a year. I think there was even a question from counsel at an earlier hearing to the effect that we have to do that out of our own pocket, we don't have any assistance from the state. I think that bears on that issue.

MR. BUSHNELL: Doctor Porter has so testified. We still don't get anything. I don't see the relevancy of this as to whether or not Detroit will get some money from the state.

MR. LUCAS: Let me go a little further. One of the arguments in the Court of Appeals as to whether or not the states should—

THE COURT: You needn't be labor this, Mr. Lucas.

MR. LUCAS: All right.

THE COURT: There is a distinct relevance to the practice of the state in connection with bussing, particularly in view of the fact it drew a line between what it did for large metropolitan areas and what it did for other areas. [2070] So, on the issue of what the state has done in the past, I think it is relevant.

A. Table 5-16, page 172 reads as follows:

"Transportation costs in Michigan, 1962-63 through 1966-67–"

Q. (By Mr. Lucas) Read the first year and the last year, if you will.

A. The year 1962-63, the total cost, this includes both state and local funds, $26,051,442.00. The average per pupil cost in 1962-63 was $14.52.

In 1966-67, four years later, the total cost was $40,339,296.00. The per purpil cost $19.84. As I said earlier, the state provides about 75 per cent of that total cost.

Q. What is the policy of the State Board of Education, Doctor, with respect to the consolidation of school districts?

MR. BUSHNELL: If the Court please, before Doctor Porter answers this question I am going to move to strike Doctor Porter's reading of this last table with respect to transporrtation and the prior table appearing on page 61 of the Thomas Report. Counsel has refused to put the Thomas Report into evidence. Since it is not in evidence he is using this witness as he used other witnesses, to simply read from something not in evidence, not as a foundation for any future [2071] question, but to get it on the record. I believe it is admissible unless the entire document is here before the Court and I move to strike.

THE COURT: Mr. Lucas, there is a point there, isn't there?

MR. LUCAS: Your Honor, we have been through this before about whether we will introduce whole books or introduce extracts. I think since the doctor is an adverse party I would be permitted to lead him and I could read them and ask him if that is true. He has read the document and indicated what the policy is. I don't expect him to have in his head every number and every figure. I will be happy to move to introduce any pages he read.

am simply not asking the Court to be burdened with the entire volume.

If the Court would like to have it for any reason I have no objection to its introduction. Mr. Bushnell, if he wants to introduce it for some purpose of his own or Mr. Krasicky, I would have no objection to the document but I think that is part of his proofs. I don't think it is necessary for the Court to have the entire volume before it.

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[2075] CROSS EXAMINATION BY MR. KRASICKY:

Q. Doctor Porter, I believe you testified you are chief executive officer of the Department of Education, is that right?

A. That is correct.

Q. And the Department of Education is one of nineteen executive departments?

A. That is correct.

Q. Now, the head of the department is the State Board of Education, is that right?

A. That is correct.

Q. And you are their chief executive officer?

A. That is correct.

Q. Can you tell the Court how many school districts there are in the State of Michigan at the present time?

A. As of April 1, 1971 there were 530, K-12 districts, that would be kindergarten through 12th grads and 87 non-K-12 grades, that would be a total of 617.

Q. Do you know how many children are being educated in these school districts in Michigan during the current school year?

A. Approximately 2.2 million.

Q. Does the State Board of Education – let me put it another way – has the State Board of Education supervised the hiring of teachers in the Detroit School District?

[2076] A. The State Board of Education does not supervise the hiring of the teachers in Detroit or any other school district

except we must certify the teachers they employ and must approve any employees that are not fully certificated.

Q. Does either the State Board of Education or your office supervise the assignment of teachers in the Detroit School District to particular schools?

A. We make no supervision as to assignments except according to the State Certification Code, teachers must be assigned according to their majors and minors but we do not make the assignments.

Q. Does the State Board of Education or your office supervise the establishment of attendance areas in the Detroit School District or in any other school district.

A. The State Board of Education does not supervise attendance area assignments. The State Board has received during my tenure I think the first one of its kind, an appeal from a school district, not Detroit, requesting that the State Board overturn attendance areas and the Attorney General's office advised the Board in writing that it had no jurisdiction in regard to attendance area lines.

Q. Does the State Board of Education or your office supervise the establishment of feeder patterns for junior high school and high schools in the Detroit School District or any other [2077] school district?

A. No.

Q. Does the State Board of Education or your office supervise the bussing of children in the Detroit School District or any other school district to relieve overcrowding?

A. No, except as I testified earlier that our recommendations in regard to both that issue and the previous one be consistent with the policies of the State Board in terms of recommendations for equal educational opportunity in desegregation, but we do not supervise in this area.

Q. Now, the policies of the State Board of Education which were alluded to on direct examination, these are recommendations, are they not?

A. That is correct.

Q. Now, in the area of student attendance and bussing, did a group of parents come to visit you in the fall of 1970 from the Detroit School District?

A. Yes.

Q. Do you remember that occasion?

A. Vaguely. A group of parents visited my office indicating some concern about the fact that Detroit Public Schools had re-assigned their youngsters to another elementary school on the other side of town and the student would have to be bussed from the original attendance area to another attendance area.

[2078] Q. Were the parents all black or were they black and white that came to see you?

A. Both.

Q. Both black and white?

A. Yes.

Q. Did they make any complaint to you that Detroit was passing white schools to take them to black schools?

A. There was no complaint relative to that issue. The complaint was the safety of their youngsters.

Q. Because of the distance that the buses had to travel, is that correct?

A. Yes, because the youngsters had to get on buses, yes, sir.

MR. LUCAS: Your Honor, I don't believe counsel – counsel is referring to the A.L. Holmes matter, but I think it is improper to say they were passing directly by white schools. I think they were bussed directly into the contained black area. The issue was whether they were to go to the other schools out away from their school which were predominatly white schools as originally assigned, not bussed past schools.

MR. KRASICKY: I think we can argue what those witnesses said but I have a right to ask what this witness was told when they came to see him.

MR. LUCAS: As long as he doesn't mis- [2079] characterize the situation.

THE COURT: This is cross examination. Proceed, Mr. Krasicky.

Q. (By Mr. Krasicky) Did we get your answer to the last question?

THE COURT: Put it this way: What was their chief complaint when they came to you about the Holmes situation?

A. Their chief complaint was that they wanted me as the chief state executive officer to intervene so that their children could go to the school that they were assigned to in May. We proceeded to contact the Detroit Public Schools as we do in many cases.

THE COURT: What was their complaint? Why did they want that done?

A. They did not want their children bussed, period – out of the elementary school district they were in. That was the complaint they had to us. They felt once their children were assigned in May to this particular shcool they should not have been told in September that the children had to go to another school.

Now, the issue of whether they went north, south, east or west never arose as far as our discussions were concerned.

THE COURT: Let me be sure I udnerstand you. [2080] These people were from the Holmes Elementary School area?

A. That's correct.

THE COURT: Are you saying that their complaint was that they did not want their children to be taken out of the Holmes School?

A. That was the only complaint they voiced to our office.

THE COURT: All right, I understand it.

A. Right. We proceeded then to get in touch with Detroit officials and I think the situation had been rectified.

Q. (By Mr. Krasicky) Doctor Porter, does either the State Board of Education or your office supervise decisions of the Detroit Board in locating schools in particular areas of that school district?

A. No, because statutes in 1966 prohibited such approvals on locations sites. We do, however, make recommendations consistent with the document introduced in the evidence earlier.

[2081] Q. Now, you made reference to a 1966 amendment to the statute. Prior to that time your office supervised the adequacy of the site, didn't it?

A. '62?

Q. Yes.

A. Prior to the amendment of 1962 in terms of Act 307 of the Public Acts of 1937 we approved the adequacy of the site. We approved whether or not the proposed building was educationally feasible, and approved the safety and health standards. The legislature in 1966 struck those requirements and indicated approval would be contingent upon Health and fire and safety approval of the Fire Marshal of the Department of Public Health.

Q. Now, when your office prior to 1962 approved the adequacy of a site, exactly what did that entail, can you tell us?

A. Not within a degree of specificity, since I wasn't around then. But, basically we would take a look at whether or not the site was consistent with some of the information placed into evidence earlier in terms of transportation, in terms of balanced enrollment, in terms of access to the facility, and in terms of the kind of educational program that had been identified in the specifications.

THE COURT: Mr. Krasicky, I think it is feasible at this time to take a short recess. We will [2082] be in recess.

(A recess was thereupon taken.)

Q. (By Mr. Krasicky) Witness, we were directing your attention to the role of the State Board and your office in the area of school construction, and you testified to an amendment adopted by the legistlature, and I want to make certain that we get the correct date for that amendment. Was it in 1962 or 1966?

A. 1966.

Q. 1966. Do you know the circumstances that --

A. (Interposing) 1962. I'm sorry, 1962.

Q. '62. Do you know the circumstances that brought about the change in the law?

A. The Department prior to 1962 was in the process of requiring school districts to consolidate and reorganize. Michigan had in 1945 approximately 6,000 school districts, and one means

by which we consolidated was to require that new facilities be consistent with site planning approval and with educational specifications, and that led to the legislature prohibiting the Department from approving such plans.

Q. Do you know whether there were any racial problems attending the change that was made in 1962?

MR. BUSHNELL: I'm sorry, Mr. Krasicky, [2083] I can't hear.

Q. (By Mr. Krasicky) I'm asking whether there were any racial problems attending the change in 1962?

A. Based upon the evidence that I have available to me, most of the concerns had to do with the northern lower part of the peninsula and the Upper Peninsula, not the urban center.

Q. Your role in renovations or additions to existing structures would be comparable, would it not?

A. Yes.

Q. The State Board in your office was concerned only about educational feasibility and safety of the building, is that right?

A. And public health.

Q. Public health. Did the State Board or your office supervise any decisions of the Detroit Doard or any other board of education in the use of portable classrooms. We have not approved their location.

A. Only to the extent that we have indicated to the Detroit Board of Education they could not use certain state funds, compensatory education funds for portable classrooms. We have not approved their location.

Q. Does either the State Board or your office supervise decisions made by intermediate boards of education?

A. We do in terms of property transfer. When we are transferring property, when the request comes through, the request must [2084] be reviewed and acted upon by the intermediate school district. The Plaintiff may then appeal the decision of the intermediate school district to the State Board, and I would say that we have on the average half a dozen cases a month.

Q. Now, when you talk about property transfers you talk about the request of person or school boards to have portions of district boundaries modified, is that correct?

A. Yes.

Q. And the State Board does have a role if someone appeals a decision from an intermediate board?

A. That's correct.

Q. Now, I believe you testified that the State has provided roughly three quarters of a million dollars in state school aid funds to Michigan school districts, is that correct?

A. That's correct.

Q. Now, is it not true that school districts also support themselves from a property tax they levy themselves?

A. That's correct.

Q. Does either the State Board or your office exercise any supervision over the allocation of funds by a district between different buildings?

MR. RITCHIE: Could I have that question [2085] repeated?

Q. (By Mr. Krasicky) Does either the State Board or your office exercise any supervision over the allocation of funds by the Detroit School District or any other school district between buildings within a school district?

A. The general state aid we do not supervise the allocation within the school district by building. In terms of the categorical aid, we do supervise the categorical disbursements, particularly Section 3 of the State Aid Act where a school in a district becomes eligible for the funds, and it is our job to determine that the school has maintained an effort and also has a comparable program.

Q. And this is by virtue of the duties imposed upon you by the legistlature, is that correct?

A. That's correct.

Q. Does either the State Board or your office exercise any supervision over the selection of administrators by the Detroit School District or by any other school district?

A. No.

Q. Now, in the area that we have gone through at some length of pupil attendance, of school construction, of allocation of

funds between buildings of the hiring and placement of teachers, in these particular areas does the Governor of this state exercise any supervision over the decisions [2086] made by the Detroit Board or any other school district?

A. To my knowledge the Governor has not exercised any control over the internal decisions of local school cistricts.

Q. And in the same area has the Attorney General exercised any supervision over decisions of the Detroit Board or any other Board of Education?

A. To my knowledge that has not been the case.

Q. Now, I will show you Table2-l6 of the Thomas Report and ask you to look at it. It is a comparison, is it not, of performance in three school districts, is that correct?

A. It provides data on the school districts of Grand Rapids, Detroit, and Flint.

MR. BUSHNELL: What page, sir?

A. 61.

MR. BUSHNELL: Thank you.

Q. (By Mr. Krasicky) Dr. Porter, do you have any knowledge as to whether or not those three school districts use the same examinations with their pupils upon which that graph is rested?

A. Until 1970, last year, school districts did not by and large use the same achievement examinations. Starting in 1970 Michigan became one of the first states to provide for uniform examinations among fourth and seventh graders. Therfore, I have no evidence that this data would be [2087] based upon comparable examinations.

Q. Does the State Board of Education or your office accredit the Detroit schools or the schools of any district in Michigan?

A. The State Board of Education does not accredit Michigan schools. The attorney General, as you know, recenty indicated that the Board may undertake this activity. But, it has not to date.

Q. In the area of property transfers, the authority of the State Board to review decision of the intermedial boards is based upon statute, is it not?

A. That's correct.

Q. The State Board has a right to review by virtue of authority given to the State Board by the State Legislature?

A. That is correct.

Q. Does either the State Board or your office have authority in the area of consilidation or annexation of school districts?

A. We do not at this time force consolidation or annexation. We do have several pieces of legislation in this year that would provide some type of supervision over consolidations, annexations and reorganizations.

Q. Is this for the purpose of getting every youngster into a high school district?

[2088] A. It is threefold. One purpose is to see that we eliminate non-K-12 districts to get all students in K-12 districts. The second based upon information in the Thomas Report, would be to provide for more comparable K-12 districts. At the present time out of our 530 districts we estimate that 250 of them do not provide a comprehensive program, and third, it is to provide the State Department with some means to organize school districts that do not have adequate financial basis.

Q. Does the State Board of Education or your office have supervision over school districts to the point that it can compel them to accept non-resident students?

A. No, we do not have. That is one of the reasons for the proposed legislation.

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[2092] . . . CROSS EXAMINATION BY MR. RITCHIE

Q. Doctor, public instruction in the State of Michigan is supported by funds from two tax sources, the first I would characterize as a property owner assessment, the millage they levy on property owned in a school district and on top of that the funds the school district receives from the state. Is that basically a correct statement?

A. Basically; however, the school districts do receive, depending on certain circumstances, federal funds and other sources which would amount to anywhere from 3 to 7 or 8 per cent. Taking that factor into consideration, basically property tax and state aid are the basic sources of revenue for school districts.

Q. What is the source of the funds that the individual school district would receive from the state itself? Is it not the sales tax and also an assessment against cigarettes and liquor?

A. Well, there are certain restrictions, 3 cents of the sales tax or 2 cents of the sales tax, we have income tax, some of the [2093] funds come from that. We have other taxes, cigarette taxes and the funds come from that. General fund resources, other aid from the general fund would make up the bulk of the three quarters of a billion dollars for schools.

Q. Does the state provide funds from the sources just described to all the school districts in the state? Are there any which would not receive it?

A. Yes, there are one or two districts in the state that would not receive state aid because there is a formula based upon state equalized evaluation and when a district such as River Rouge has a state equalized of $40,000.00 it is conceivable that they would not get state aid. We have just a couple districts that would fit into that category.

Q. Would you tell us what those two districts are?

A. I could not.

Q. With regard to the districts that do receive these funds from the state, is it your statement your office has virtually no control or supervision over the districts themselves with regard to attendance areas, school siting and so forth?

A. In terms of school attendacne and the location of building sites, that is correct.

Q. In other words, the funds are given by the state to the school district and the independent school district allocates the funds as they see fit themselves?

[2094] A. That statement is basically correct, but according to the information in our office about 75 percent of the operation of any school district is taken up in the salaries of the teachers and another 5 per cent for other instructional services, so to respond to that question, once we know how many teachers are in a district and once we have in our disposal the salary schedules, we pretty much know where the money is going to go becuase 80 per cent of it goes into instructional expenses.

Q. I appreciated the fact your office knows where the money goes, but as for exercising a direct control over the disbursement you do not exercise such control?

A. That is correct, except that the budget must be balanced and submitted to our office and they must submit to our office at the end of the year an audited financial report.

Q. There is however, an exception to that and that is regarding the additional funds, the compensatory educational funds, would you call them Title 3 funds?

A. There are several discretionary fund amounts, the compensatory education fund at the state level would be one fund whereby the money must go directly to particular school districts, that is correct.

Q. Those funds are in fact under your supervision, aren't they?

A. That is correct.

[2095] Q. Are funds of that nature given to Detroit?

A. Yes, they are.

Q. Are they given to any other of the communities surrounding the City of Detorit?

A. Many, yes.

Q. Would you be in a position to describe any of those particular communities receiveing these funds?

A. Not with any degree of specificity. There are approximately 38 school districts in the Wayne intermediate area and I would imagine most of them in one way or the other receive some Section 3 funds as well as some Title 1 funds. The district receives the funds based upon our assessment data.

Q. Does your department have any supervisory control or authority over the creation and operation of bussing routes within the State of Michigan?

A. Yes.

Q. What is the extent of that authority?

A. It is based upon the statute in terms of the disbursement of state aid to the tune of about $29 million, but that is, as I indicated before, basically for the outlying areas of the state.

Q. Does your office on occasion define the route the buses will take between the schools?

A. No. The language in the statute is pretty specific. The school [2096] district following the statute and th regulations pretty much comes up with a bus route that is consistent with approval. We do not specifically tell them which was the bus has to travel.

Q. Has your office on past occasions ever created a bus route between different districts?

A. Not to my knowledge. I have no information on that.

Q. Would it be your statement that bus routes as they presently exist, exist only within the districts themselves and not between districts?

A. No, that wouldn't be a fair statement because in terms of non-K–12 districts we have students going from the non-K-12 district into the K–12 districts and in terms of our area center we have many students riding buses from cities into area centers. Where there might be a cooperative program such as in Ida, Michigan and Monroe, where all of the students go to the Ida Public Schools that have special education needs, such as mentally handicapped or physically handicapped, the buses then to out to all of the school districts in that immediate area to bring those type of students in to one school district, so all over the state we would have buses, depending on the circumstances, going from one school district to another school district to provide selected and specialized educational services not being provided in the other school districts.

[2097] Q. Have you ever on past occasions defined bus routes which would be in accordance with the supervisory powers you have exercised over the allocation of compensatory funds?

A. No.

Q. Would it be your opinion, based on your knowledge of the authority of your office, and the statutes of the state, that you would have such authority?

A. Yes. I think we must take into consideration that in 1963 the legislature adopted in Michigan a new constitution. That constititution provides certain supervisory powers for the State Board of Education that has not heretofore been tested.

I suspect based upon the new constitution and some decisions rendered recently by the Supreme Court that the supervisory powers of the State Board of Education might well be far greater than what the statutes now provide.

Q. The question was asked you has the governor of the state – I think the question was – strike that, Mr. Reporter.

I believe the question was has the governor of the state ever exercised any supervision over the Detroit School Board or any other school board? I think your answer to that was that he has not exercised ——

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[2111] MR. KRASICKY: Doctor Porter, during the time you have been Superintendent of Public Instruction, have you received any complaints from citizens of the school district of the City of Detroit that the Board of Education of Detroit is deliberately operating a segregated school system?

A. To my knowledge we have received no complaints from citizens of Detroit indicating that the Detroit Board of Education was specifically operating any type of segregated program.

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REDIRECT EXAMINATION BY MR. LUCAS:

Q. You were asked, Doctor, concerning actions by the governor with respect to the Detroit Board of Education. Is it

your understanding that the Detroit Board of Education itself adopted certain regional boundaries pursuant to Act 244 of the state legislature, so-called decentralization boundaries?

A. Yes. There were mandated to do that.

A. That's right. Then the Governor's Commission under Act 48, rather than the Board itself, drew new boundary lines for Detroit, is that correct?

A. Yes.

MR. KRASICKY: I object to the form of [2112] the question. It is not the Governor's Commission, it is a commission of the State of Michigan. It is an entity of this state. I object to the characterization.

MR. LUCAS: I will accept that amendment that it was appointed by the governor, your Honor, pursuant to statute.

Q. (By Mr. Lucas) You mentioned under Section 3 the State Board does have authority to determine that an individual school has a comparable program, do you recall that?

A. Yes.

Q. Can you tell me what you mean by determining that an individual school within a school district has a comparable program?

A. The statute for the disbursement of some 17.5 million dollars in education, state funds, indicates that a district must maintain the same effort in the upcoming year as it did the previous year for that billing. In other words, you cannot use the money to supplant the local money.

Q. Is that the same as the Title I requirement?

A. Yes.

Q. The federal law has the same thing for its compensatory program?

A. The second one which is comparable to the new federal guideline, our state says now that in any Section 3 or Title I school, the local school district must provide comparable resources to that of the average of all other schools in that district to be [2113] eligible for the funds.

Q. If they do not meet this comparability requirement the funds are removed or not granted, is that correct?

A. That is correct.

Q. You mentioned certain authroity of the State School Board with respect to property transfers. Are you aware of certain hearings before the State Board of Education with respect to efforts in the City of Pontiac to detatch a portion of, I think it's the Bloomfield Hills area, and attach it to another school district?

A. As Chairman of the State Board–

MR. KRASICKY: Just a minute, your Honor. I object to the relevancy to this particular hearing. This Court has before it a consideration whether the Detroit School Board District is operating a segregated school system. There is a lawsuit pending involving the Pontiac School District to which we are not parties and suddenly it becomes part of this lawsuit. Are you aware of the State Board's role? I don't think it is relevant to these issues.

MR. BUSHNELL: I join in the objection.

MR. LUCAS: I think it was brought out on cross examination. To be frank, I don't know whether it was Mr. Bushnell's or Mr. Ritchie's cross examination at this point but that is when the issue came up. I think we are [2114] entitled to inquire into it to find out what power and what role the state has with respect to this matter. I think the role of the state in the public education and how it exercises that mandate is important in this lawsuit.

MR. BUSHNELL: This I don't believe came up in Mr. Ritchie's cross examination and I know it didn't come up in mine since I used the good offices of the state superintendent to read some paragraphs.

THE COURT: Well, the defense enters a general denial. You may inquire. This goes to the control or power of the state superintendent and also the Board of Education.

A. Well, as I was about to say before counsel interrupted and it had no effect on it, as the Chairman of the State Board and Chief State School officer, there is nothing pending before the State Board at this time at my level regarding the question you asked. I know of no case.

Q. (By Mr. Lucas) Is there an appeal pending to the State Board?

A. I have no knowledge of any appeal from, you said Bloomfield Hills?

Q. I am not sure of the area, a portion of the Pontiac district.

A. No. As I said before, let me clarify this for the record, the State Board of Education has a property transfer officer, that property transfer officer along with the attorney general's [2115] office, our legal counsel, they review such cases.

I have not received or had any communications either from the School District of Pontiac or from citizens in Bloomfield Hills that they were appealing a case to our office. Now, we have many cases that are appealed but they never come to my attention until after the hearing officer has conducted the hearing.

Q. A hearing officer is part of the State Board?

A. Yes.

Q. Are you aware of the action of the State Board with respect to the City of Benton Harbor in a similar appeal?

MR. KRASICKY: I make the same objection, if your Honor please.

MR. BUSHNELL: Concurrence.

THE COURT: Same ruling. He may answer.

A. We have had a number of cases, the most recent case involved the Coloma School District where a piece of property was annexed–deannexed from Benton Harbor to Coloma. I am sure I am aware of that, that took place in August, 1970, or thereabouts.

Q. (By Mr. Lucas) When you say a piece of property you mean certain schools and pupils that attend those schools, certain geographical areas which are part of the school district?

A. That is correct.

[2116] Q. Is it your understanding the intermediate district first holds these hearings on request?

A. That is correct.

Q. And in the Benton Harbor instance the intermediate district refused to permit the Coloma district to deannex or be attached to another district, is that correct?

A. No. The Coloma district was receiving the piece of property. Coloma would be one K–12 district and Benton Harbor would be the other K–12 district.

Q. It was a portion of Benton Harbon going to Coloma?

A. Yes.

Q. The intermediate board refused to permit it and the appeal was to the State Board?

A. Yes.

Q. Did the State Board then approve the deannexation, if you will?

A. The hearing by the hearing officer —

Q. He takes the evidence?

A. That is right, and the recommendation of out office was to uphold the Berrien intermediate school district.

Q. You upheld the intermediate school district?

A. Our recommendation was to uphold it.

Q. What did the State Board do?

A. The State Board reversed that.

Q. With respect to transportation, is it your understanding of[2117] your authority that you have the authority yourself or someone designated by you to review, confirm, set aside or amend the action, order or decision of the Board of any school district with reference to the routes over which pupils shall be transported, the distance such pupils shall be required to walk and the suitability and number of vehicles and equipment for the transportation of the pupils?

A. That is the statute, that's right. There have been no cases at my level in regard to any transportation of pupils.

Q. You stated that the State Board does approve or disapprove the certification of teachers, sets the standard for certification. Are you familiar with the term ESRP, Emergency Substitutes and Regular Positions? Is this a statewide term?

A. No, that is a Detroit Federation of Teachers, Detroit Public School term. It is not a State of Michigan term.

Q. You understand that to be a teacher who is not fully certified?

A. I know what it means, yes.

Q. Do you approve a temporary placement of these teachers or is that subject to review?

A. No, we do not approve the temporary placement of the teachers. What we do is usually approve a laundry list. What happens is the Detroit Board of Education will submit the names of 200 or 300 people who meet the permit standards, either they are eligible for full year permits or 90 day substitute permits [2118] which is the term you are referring to. What we do is within 30 days of the time the teacher is hired or before December 1st, certify to the local school districts that those people are eligible to perform in the classroom on a substitute basis or on a full–semester basis as per their placement by the Detroit Public Schools.

Q. You don't decide on the place but decide on whether they meet those qualifications, is that correct?

A. Right. But we only do that when the school district has certified that no fully certificated teacher is available.

Q. Under Section 3, does the program call for any teacher, hiring additional teachers, regular teachers, substitutes or specialized skill teachers?

A. Section 3 has three requirements in it. One of the requirements is that a school district, a school may hire teacher aides, these are not certificated people, to assist the teacher but there must be a certificated teacher in the classroom.

Q. Some of the funds may be used to hire these people?

A. That is correct.

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[2121] . . .

MR. KRASICKY: Doctor Porter, the authority of the State Board in property transfers is by virtue of a statute, is it not?

A. That is correct.

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COLLOQUY

JOHN W. PORTER

[2160] (Colloquy of Counsel)

MR. YOUNG: If it please the Court, I would like to very briefly take up two matters in connection with Dr. Porter's testimony of last Friday.

First of all, Dr. Porter inadvertently indicated with reference to state aid reimbursement for transportation that for 1970-71 there was statutory authority for reimbursement for in-city transportation, but because of a lack of funds transportation in rural areas first had to be reimbursed by state aid money. However, in checking the statute it is indicated that an amendment to the state School Aid Act, Section 11-J, 1970, the most recent amendment indicates, and I quote:

"It is the intent of the legislature that beginning with the school year 1970-'72 transportation cost within cities and villages will be reimbursed."

Thus, for the current year there is not authority, let alone funds.

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[2176] JESSIE KENNEDY

was called as a witness for the Plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR.CALDWELL:

Q. Is it Mrs. Kennedy or Doctor Kennedy?

A. Mrs. Kennedy.

Q. What is your present position with the Detroit Board of Education?

A. Region superintendent of Region 1.

[2177] Q. How long have you been with the Detroit School System?

A. Since 1941.

Q. Prior to that what did you do?

A. I was a student.

Q. School teacher?

A. No, a student.

Q. When you came with the Detroit system, what was your first job?

A. As a teacher at Trowbridge Elementary School.

Q. Was that an all black school?

A. Yes, it was.

Q. Is Trowbridge still in use?

A. Trowbridge building is in use, but it is now a special education unit.

Q. Is it still an all black school?

A. That I can't answer, because it is not under my jurisdiction.

MR. CALDWELL: Your Honor, Plaintiff's Exhibit 128-B reflects that in 1969 Trowbridge was 100 per cent black. The school does not appear in 1970 on that exhibit.

Q. (By Mr. Caldwell) How long were you at Trowbridge Elementary School?

A. Approximately six years.

Q. And after that what was your position?

A. I was transferred to Miller High School and an English teacher.

[2178] Q. Miller High School?

A. Yes.

Q. Is that the same facility which is presently Miller Junior High School?

A. Yes, it is.

Q. Was Miller established as a highschool?

A. No, Miller was established as a junior high school.

Q. Do you know approximately when it became a senior high school?

A. I can't tell you the exact date.

Q. In what present high school constellation is Miller Junior High School located?

A. In the Martin Luther King.

Q. That would be the former Eastern High School constellation?

A. The former Eastern High School.

Q. At the time you taught at Miller was it predominantly black?

A. Yes, it was.

Q. And Eastern High School was in operation at the time?

A. Yes, it was.

Q. And what was the racial composition of Eastern High School

A. I can't tell you.

Q. Was the majority white?

A. That I don't know. It was mixed.

Q. What years were you English teacher at Miller High School?

A. One year, I believe from about '40 to '50.

[2179] Q. Then what was your next position with the school system?

A. English and speech teacher at Northeastern High School.

Q. Was Northeastern a predominantly black school?

A. Predominantly black, but there was a large representation of white students.

Q. And how long were you at Northeastern High School?

A. Five years.

Q. And then what was your position?

A. Then I was transferred to Central High School as a counselor.

Q. And what year was that?

A. 1955.

Q. And was Central predominantly white at that time?

A. Yes,it was.

Q. About 70 percent white?

A. Yes.

Q. When you were assigned to Central what was the racial composition of the faculty at Central? Were you one of the first black teachers assigned to Central?

A. Yes. Another black teacher and I came in as the two first black teachers on the staff. Certainly that year we integrated the staff.

Q. And how long were you at Central?

A. From '55 till '64, nine years.

Q. And in 1964 what was the racial composition at Central?

[2180] A. I would hazard a guess, if you would like it.

Q. Yes.

A. That was probably 99 percent black at that point, or very close to it.

Q. Do you know presently, Mrs. Kennedy, what the racial composition of the faculty at Central is?

A. No. That was under my jurisdiction. As I recall it was perhaps more than 50 per cent black staff members.

Q. Let me tell you that Plaintiff's Exhibit 130 reflects that at the present time Central is 100 per cent black, and that the faculty is 55.9 per cent black. And after you were assistant principal at Central what was your next position with the Detroit Board of Education?

A. Principal of Northwestern High School.

Q. And what was the racial composition of Northwestern High School at the time you were made principal?

A. 100 per cent black, or so near that if there were any other racial students I was not aware of it.

Q. How long were you principal at Northwestern?

A. Three years.

Q. And after that you became region superintendent?

A. Yes, of Region 4.

Q. And what year was that?

A. 1967.

[2181] Q. And how long were you regional superintendent of Region 4?

A. Three years.

Q. And then you became region superintendent of Region 1?

A. Yes.

Q. You were actually a teacher until 1955 with the Detroit system?

A. That's correct.

Q. During that portion of your career with the Detroit system, were you ever offered a job at a school which did not have Negro students in it?

A. No.

Q. Also referring to that portion of your career, was it the practice of the Detroit Board of education to assign black teachers to schools that were predominantly black, but not to assign black teachers to schools which were predominantly white?

MR. VON ENDE: Your Honor, I will object. This witness has just testified that she was a teacher at that time, not an administrator, not in any role wherein she would be privy to policy or be active in the formulation of policy. So, I don't believe this witness is capable of answering as to what the policy was of the Board of Education at that time. She was a teacher, not a policy maker.

MR. CALDWELL: Your Honor, I didn't ask her a question concerning policy at that time. It was concerning [2182] the practice.

MR. VON ENDE: Your Honor, I don't think that cures the defect in the question.

THE COURT: She may testify as to what she knows of her own knowledge about the practices.

A. Of my own knowledge of the practice I knew of no black teacher who was placed in a school where there were no black students.

Q. (By Mr. Caldwell) Mrs. Kennedy, do you recall what was commonly known as the Sherrill School case, which was a case filed in this court in 1962 or '63, I believe?

A. Vaguely.

Q. Do you recall testifying at a deposition taken in that caseu?

A. Yes, I do.

Q. Would your memory in that regard to the practices of the Detroit Board of Education have been better at that time than it is today?

A. Conceivably, yes.

MR. RITCHIE: If the Court please, I wonder if I could have that question and answer read back.

THE COURT: He asked whether her memory at that time might have been better than it is now.

MR. RITCHIE: Okay. Could the witness be instructed to speak a little louder, please, and perhaps Mr. Caldwell?

[2183] MR. CALDWELL: Yes.

Q. (By Mr. Caldwell) Mrs. Kennedy, I have a notarized copy of your deposition. It is entitled Sherrill School, Parents Committee and others versus the Board of Education of the City of Detroit, Civil Action No. 22092 of the United States District Court for the Eastern District of Michigan, Southern Division. Present at that deposition it shows Mr. Ernest Goodman appearing on behalf of plaintiffs, and Mr. George A. Bushnell, Jr. appearing on behalf of the defendant, and in that deposition is this quote –

MR. VON ENDE: I ask what the purpose of reading from this deposition is?

MR. CALDWELL: She stated that her recollection of the facts would have been better at this time. My purpose is to merely attempt to refresh her memory or jog her memory or ask her if her recollection at this time was as I am about to read her answers.

MR. VON ENDE: Your Honor, I'm not sure whether Mr. Caldwell's purpose is impeachment, but I believe he got an answer to the question which he asked, and that was a question concerning faculty assignment. Over my objection I believe Mrs. Kennedy answered that, and I don't believe that she showed any faulty memory.

[2184] THE COURT: This is an attempt to refresh the recollection of the witness. The practice I prefer, Mr.Caldwell, is at this point for you to show the witness the question and answer that you have reference to and let her read it to herself, then follow it up by asking if that refreshes her recollection.

MR. CALDWELL: Thank you, your Honor.

Q. (By Mr. Caldwell) Mrs. Kennedy, I will show you the deposition and ask you to read the question beginning on line 8 and answer beginning on line 11.

(A document was handed to the witness.)

A. Thank you.

Q. Does that refresh your recollection, Mrs. Kennedy?

A. Yes, it does.

MR. VON ENDE: Again I feel Mr. Caldwell must exhause the witness' recollection and I don't believe he has. I don't think the witness has shown any lack of recollection.

THE COURT: You may put your next question. Objection overruled.

Q. And at that time the question was: "Now, when you speak of these practices prior to this period of change, will you indicate – "

THE COURT: Her recollection having been [2185] refreshed, what is her answer now?

MR. CALDWELL: All right, your Honor.

Q. Let me ask you again were black teachers placed in schools that were predominantly black, but they were not placed in schools which were 50 percent or more white?

A. That is true.

MR. VON ENDE: Through this colloquy I lost the time frame Mr. Caldwell set up for that question.

MR. CALDWELL: The time frame was up through 1955, I think.

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[2231] CHARLES L. WELLS

was called as a witness by Plaintiffs herein and, being first [2232] duly sworn, testified as follows:

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DIRECT EXAMINATION

BY MR. LUCAS:

Q. What is your occupation, Mr. Wells?

A. Currently I am assistant superintendent in charge of the Office of Pupil Personnel Services for the Detroit Board of Education.

Q. How long have you been with the Board?

A. Since March of 1968.

Q. Have you held that position since 1968?

A. No. When I first came to the Board I was the executive director of the Detroit Youth Foundation.

Q. What is your employment history, generally, prior to coming to the Board?

A. Primarily in psychiatric institutions.

Q. What is your professional training?

A. Psychiatric social work.

Q. Are you familiar, Mr. Wells, with an organization known as the Citizens Association for Better Schools?

A. Yes, I am.

Q. What positions did you hold with that organization?

A. I was [2233] the vice president for two years and the president for one year.

Q. What was that organization?

A. That was an organization made up of citizens who lived within what was then the center district of the City of Detroit. It was an organization concerned about the schools that center district.

Q. Did that organization participate actively in the affairs of the Citizens Advisory Committee on Equal Educational Opportunity?

A. Yes it did.

Q. Did there appear various members thereof and did they testify before the Committee?

A. Yes, they did.

Q. Did you, yourself, appear on a number of occasions before various subcommittees?

A. I did.

Q. Did that organization furnish statements of position to the Citizens Advisory Committee?

A. It did.

Q. Directing your [2234] attention to a document previously marked for identification as Plaintiff's Exhibit 105, and in particular page 463 in that report, it purports to be minutes of a meeting. Can you tell the date of that meeting as it appears?

A. 3 November 1960.

Q. Who does it show present at that meeting?

A. You want me to read all of the members of the committee?

Q. Please.

A. Present from the School Community Relations Committee: Herbert Eiges, Judge Nathan Kaufman, Wayne Stettbacher, Mrs. Harold Thornell; from the Committee of Organization and Administration: Frank Armstrong, Doctor Horace Bradfield, Damon Keith, Mrs. Arthur Yabroff.

Q. Do you take that to be a joint meeting of those two sub-committees?

A. Yes.

Q. Does it show the guests at that meeting?

A. Yes.

***

THE COURT: All right. [2236] Are you offering it at this time?

MR. LUCAS: I was going to have the witness identify his presence at this particular meeting and then offer it, your Honor. I was interrupted by Mr. von Ende.

MR. VON ENDE: I don't believe his presence at the meeting goes in any way to the identification of the document, but if I am premature I will sit back down and get up when it is offered.

THE COURT: Proceed and lay your foundation.

A. Special consultant –

Q. (By Mr. Lucas) That is the organization to which you testified you were a member?

A. Yes, Present was Herschel L. Richey, president, Charles Wells, vice-president. Mrs. Gladys Stines, secretary, Mrs. Kathleen Bell, chairman of Program Committee.

MR. LUCAS: At this time, your Honor, we would offer the official minutes of the Citizens Advisory Committee for Equal Educational Opportunity. If the Court will recall this was a committee appointed by the Board of Education to study the affairs and actions of the Board, to take evidence and study the data and make recommendations to the Board. These are the minutes of that official agency which was funded and selected by the Board.

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Q. (By Mr. Lucas) Directing your [2242] attention to the statement beginning at page 478 and ending at 481, is that statement familiar to you?

A. I recognize it in general terms. This is about 11 years old.

Q. Keep your voice up, please.

A. This statement is some 11 years old, and I have not even had a chance to read it. But, I remember that such a statement was made.

Q. Do you recall that the statement was prepared by the Citizens' Association?

A. That is correct.

Q. And this was the position taken to the Board or to the Committee appointed by the Board with respect to the problems as you saw them at that time, is that correct?

A. That's correct.

Q. Would you read that aloud, please, sir?

THE COURT: This is whose statement?

MR. LUCAS: A statement of the Citizens –

Q. (By Mr. Lucas) Would you [2243] read the end there, please, sir?

A. The statement is signed The Citizens' Association for Better Schools, Herschel L. Richey, President, and Mrs. Henri A. Stines, Secretary.

MR. LUCAS: Your Honor, at that time Vice President and President at the time it was presented.

Q. (By Mr. Lucas) Is that correct?

A. Yes.

MR. LUCAS: Excuse me, your Honor. Just for correction of the record, counsel stated that the abridged version of the Equal Educational Opportunity report is the item in evidence. It may also be. But, the unabridged version is marked Plaintiffs' Exhibit 3. You might want to prepare that, counsel.

Q. (By Mr. Lucas) Go ahead, sir.

A. "November 3, 1960.

"TO: Honorable Nathan Kaufman, Chairman

Committee on Equal Educational Opportunity.

"We should like to begin our presentation by reviewing with you briefly the development of our organization. We feel it is significant as it represents an attempt on the part of people who make up this organization to effectively deal with the frustrations historically inherent in [2244] attempting to provide for minority group children an adequate education

within the Detroit Public School System. A majority of the people of the Negro race moved into the now Center District from other school districts within the limits of the City of Detroit. Although better housing conditions were but one of the motives for such a move, of equal importance was a desire to provide their children with a more equitable and enriched educational experience.

"They were aware of the increased population within their new geographical area, and accepted the counselling ot the then new administration of the Board of Education, to the effect that additional tax monies would have to be made available if educational standards within the City of Detroit were to be improved, or even maintained. Consequently, each of them made a strong personal investment in the millage campaign of Spring 1959. In this campaign, initially, their efforts did not meet the wholehearted approval of the Negro community, since from past experience, particularly involving other millage campaigns, members of the Negro community had observed that the results of the expenditures [2245] of monies obtained from additional taxes, had little effect on the facilities, the equipment, or the curriculum available to their children.

"Despite this resistance, they were aware that there would be less justification for demanding adequate educational opportunities for their children if they did not accept their responsible share for the successful passing of the millage program. As a consequence of their efforts, their respective schools voted overwhelmingly for the millage program, and they logically expected that positive results would follow their efforts.

"Their first disillusionment occurred only a few months, but yet a few weeks after the passage of the millage – they were rewarded with the creation of the present Center District. In effect this District, with a few minor exceptions, created a segregated school system. It accomplished with a few marks of the crayon on the map, the return of the Negro child from the few instances of an integrated school exposure, to the traditional predominantly uniracial school system to which he had formerly been accustomed in the City of Detroit.

"Their attempts to meet this threat [2246] to their children's educational experience through existing school organizations met with little success. Their conferences with District and City-Wide administrators including the superintendent, Dr. Samuel Brownell, resulted in only rationalizations concerning segregated housing patterns, and denials of any attempts at segregation. When it was pointed out that regardless of motivation, that segregation was the result of their boundary changes, little compromise was effected, except in one or two instances, where opposition leadership was most vocal and aggressive.

"Concurrent with boundary changes, it was alarmingly noticeable that the school population within the Center District was rapidly increasing, and that the priority building program would have little positive effect in dealing with the problem. Attempts to discuss this problem with school and district administration gave promise of only minimal relief.

"Finally, it had been earlier noted by new residents moving into what is now the Center District that prior to and during its change from a uniracial (predominantly white) to a biracial [2247] system and again to a uniracial (predominantly Negro) school system that the quality of their children's previous educational experiences did not equip them to compete on an equal basis with resident children in the same grade classifications.

"These experiences made them aware that no one organization composed of one or several schools, could effectively coordinate the mutual concern of the many parents residing within the Center District. Thus out of the several discussions of groups of people whose primary concern was the adequate and equitable education of their children, this organization was born. It is felt that no better description of its purpose, its objective, and its reason for being can be found than in the preamble to its Constitution, which is:

"PREAMBLE: Our interest is in equal educational opportunities for all persons within the City of Detroit.

"We do not believe that such opportunities are possible within a segregated school system.

"We oppose a policy of containment of minority groups within specified boundaries, an [2248] example of which is the Center District. While the above is of utmost concern to us we are also aware that there is need for improvement and enrichment of the standards within this district in practice as well as in theory.

"We believe that once standards have become reasonably adequate, that such standards should be maintained. It should be further recognized that future population shifts brought about by urban redevelopment will adversely affect the above goals in the Center District, unless there is anticipation of the impact of this population growth upon this district.

"Since the inception of our organization we have noted the following:

"The public school system of the City of Detroit is divided into nine administrative districts, one of which is the Center District.

"Yet, every day, when the children in this city leave their homes to go forth to public schools, approximately one out of every four leaves a home in the Center District. Of the 154,969 children enrolled in public elementary schools as of September 30, 1960, 36,264, or 23.4 percent of these [2249] children leave a home in the Center District.

"There are 221 elementary school buildings in the Detroit Public School System. Of these 28 are in the Center District. This means, then, that the 23.4 percent of the total elementary school population is assommodated in 12.7 percent of the buildings.

"Fifteen percent of these children sit in classes of 40 to 44 students per class. This is in comparison to:

East	.13 percent
North	.05 percent
Northeast	.04 percent
Northwest	.08 percent
South	.01 percent
Southeast	.01 percent
West	.05 percent

"Sixty-two and one-half percent of all the children in the city's elementary schools who sit in classes of 45 to 49 are children in the Center District. These schools in the Center District find their capacities short by 6,352 pupil stations. In other words, their capacities are overtaxes to the extent of 16 percent; and the future building [2250] program, as set forth by the superintendent's report of October 17, 1960, will make available only 11, 189 additional pupil stations within the next ten-year period. However, this will be insufficient to meet the demands of the Center District. Therefore, it is apparent that a bussing program will have to become a permanent part of the school housing program. Thus the manner in which the bussing program is administered becomes a matter of acute concern.

"Presently, children are being bussed by grades. Under this system a number of problems are created:

1) It makes necessary a reorganization of the bussing school, as well as the school into which the children are bussed.

2) They are not integrated into the school into which they are bussed, except in minor instances.

3) There is a possibility of the separation of the family unit.

4) Parents are unable to establish a good rapport with the teachers and administrators [2251] in the new school since there exists a time limit in which these children will be members of that school.

"It is recommended that a policy of bussing by geographical areas instead of by grades be instituted so as to eliminate the above problems.

"The emphasis on curricula objectives are not comparable in the various school districts of the Detroit School System. There is a tendancy in the Center District to stereotype the educational capacity of the children. This means that children entering the schools in this district whose background enables them to comprehend an enriched educational program, are not challenged.

"For example, one student in the Hutchins Intermediate School who desired to prepare for entrance into an Eastern college found that Latin was not offered, and only after considerable effort by members of the community, along with his family, was Latin placed back in the school curriculum. Many other instances can be cited upon request.

"Conversely, children whose initial capacity is retarded by deprived socio-economic [2252] circumstances also go unchallenged. The District Administrator has admitted that no program exists to take care of these children.

"The curriculum and counselling as they now exist, do not encourage students to achieve their maximum capacities. We feel that the responsibility for any inequities in the educational experience offered to any group of children within a given school system must be assumed by those persons charged with the overall responsibility of administering that system.

"Therefore, we recommend that strong policies be adopted by the top administration to erase inequities of the Detroit Public School System, and a policy of supervision through all levels of administration be instituted at all levels of administration to insure equal educational opportunities to all children.

"The Citizens' Association for Better Schools."

[2253] Q. Do you join in that statement in submission to the committee?

A. Yes, I did.

Q. Directing your attention to page 47 of the report, the paragraph in the minutes which refers to you, will you read it to yourself, please, and I would like to ask you a question.

Now, that paragraph refers to the Higginbotham School?

A. Yes, it does.

Q. The Higginbotham School at that time, was it a white or Negro school?

A. It was a Negro school.

Q. Where was that located?

A. It was located in the northwest area of Detroit just south of Eight Mile Road and just east of Wyoming.

Q. Would you step to the large map and quickly just point it out?

A. Here. (Indicating.)

Q. All right, sir. And at that time was the Board bussing students from other black schools to Higginbotham?

A. Yes, it was.

Q. Were the schools surrounding the Higginbotham School attendance area white schools or black schools?

A. White schools, I believe.

Q. This reference in the minutes of the commission, does it indicate a recommendation or a statement with reference to the [2254] utilization of the excess space at the Higginbotham School in some other manner rather than bussing school children into Higginbotham?

A. Yes. If I remember correctly our position was that the utilization of space at the Higginbotham School could be used to bring in children from the surrounding area. In other words, the boundaries around the Higginbotham School could be expanded so as to bring about integration within that school.

Q. Directing your attention to page 445, which is a meeting dated June 21, 1960, that is a joint meeting, School Community and Organizational Administration, is that correct?

A. Yes.

Q. Directing your attention to page 445, the last page where there is a reference to Mr. Wells and again on page 444, would you read that, sir?

A. Do you want me to read that to myself?

[2255] Q. Please.

A. All right.

(The witness read the document to himself.)

Q. Now, in this particular section you quote the Board of Education at a meeting wherein you discussed or you and your committee discussed matters with them as "There is no discrimination" and then you went on to state, "When we look at the problem and list specific items such as the fact that our district – "when you say "our district", what district are you referring to?

A. We were then talking about the center district.

Q. How did you describe it in here at that time?

A. (Reading) "Such as the fact that our district looks like the coastline of the Eastern United States where the Negro population is on one side the the white population on the other."

Q. With regard to that same situation, you were expressing a problem which your committee had met in attempting to discuss this. Can you tell me how you came to be discussing this with the Board at that time?

A. It was not with the Board of Education, I believe it was with the administration of the school system.

Q. The administrative staff?

A. Including the superintendent.

Q. All right.

[2256] A. Our initial concern about the boundaries of the center district grew out of the concern we had in 1960 about the changing of the attendance areas between the Central High School and the Mackenzie High School.

Q. Is that the optional attendance area also set up in that?

A. A part of that was optional. Well, let's put it that way, a part of it had been optional, the proposal was to eliminate the option. In the process of eliminating the option what it would mean would be that by and large the few balck children who had been attending Mackenzie would have been pulled back into the Central area.

Q. Mackenzie at that time was a majority white school?

A. Predominatly white.

Q. Central by that time had become black?

A. Predominatly black.

Q. So the cancellation of the optional area which had been there had the effect of preventing black children choosing Mackenzie, is that correct?

A. That is right.

Q. Where there any other schools – there is a reference made to the establishment of the center district boundaries – were there any other schools which had not previously been in certain feeder patterns that were drawn back into the center district?

[2257] A. I am trying to remember now as I said eleven years.

Q. I understand.

A. If I remember correctly, the Sherrill School which also had been a part of it, that protion north of Tireman had been attending Mackenzie and they in turn, the total school then would have been returned to the Chadsey area.

Q. What about Tappan and that area, are you familiar at all with changes that took place?

A. Tappan was the junior high school in which Winterhalter, the elementary school in the area south of Davison just west of Ewald Circle attended. At that time the students from that area attended Tappan and all students from Tappan attended Mackenzie.

The new change would mean that the students from Winterhalter, and I think McKerrow which is just below Winterhalter would have attended Tappan through the 9th grade, but then had been pulled back into the center district to attend Central High School.

The other students in Tappan would have gone to Mackenzie.

Q. The other students in Tappan, were they predominatly white students?

A. Yes. Our concern about this region really at that time was

that we could draw a line which separated the black residents [2258] from the white residents and almost to the alley and that in effect was the boundary line of the center district.

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DARNEAU V. STEWART

was [2334] called as a witness by Plaintiffs, and being first duly sworn, testified as follows:

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[2350] . . .

Q. (By Mr. Lucas) The statement, to refresh your memory again, of July lst upon your inauguration as president of the Board reads as follows:

"This Board in past years held to perpetuating segregation and must now undo the wrongs of the [2351] past. I recognize as I'm sure that you do that merely assigning students to different schools would not have performed the task that we wanted unless we could have provided improved programs as well as additional services. But, it was at least a start in the right direction. Neighborhood schools and bussing are emotionally charged words, and generally those who expose them completely overlook other factors. There is, in fact, a great deal of inconsistency and hipocracy that all too oftens surrounds the lip service paid to these two principles. Judge Tuttle several years ago stated that neighborhood concept changes as factors change for those who most frequently use the term. He points out that past practices were if a white child living in a black area was allowed to attend a white school out of his neighborhood, then the concept took on another meaning, and when a black child wasn't to attend a white school, the argument was in favor of the advantages of the neighborhood plan. Cases in point can well be illustrated by what occurred years back in Detroit. A pocket of black students living in the Eight Mile-Wyoming area were assigned to Northern High when they should have been attending Redford High. Students at Hally, which is south of Six Mile

Road, fed into Mumford when the student population was predominantly white. The Parkside Homes students were bussed to [2352] the A.L. Holmes School. Boundaries were changed frequently as the racial composition of a school changed, and in those cases no one had petitions circulated to recall Board members. Where was the city's sense of value then? As one of the Board members affected by the recall movement, I can only say that I personally regret it. It seems to me that those signing the petitions are in defiance of the Supreme Court and are, in effect, blocking the doorways of our schools as others have done in the past. I'm afraid I can't agree with those who have expressed the fears that our plan would polarize the city. In my opinion, it already is. Nevertheless, however the Board may feel about the legislative act, it recognizes that a school district is a creature of the state. Hence, any statute pertaining to the Detroit Public Schools will be observed."

Is that a portion of your statement as you recall making it, sir?

A. Yes, it is. [2353]

Q. Did you agree with that statement at the time you made it?

A. Yes, I did.

Q. Do you agree with it here today?

A. It is still a fact in the past this is what occurred in Detroit.

***

[2356] . . .

Q. (By Mr. Lucas, continuing) Do you remember making a statement at approximately that time with reference to the previous practices with regard to boundaries of schools?

A. Yes, I do.

Q. What was your statement?

A. Well, I basically pointed out, as I recall, the purpose was to point out as long as we continue with north–south boundary lines that it would help to promote segregation and keep a large majority of white communities and black communities separated,

that the boundary lines, if they were drawn from east to west that you would have a better mixture of races in our high school system. There would be pockets still of all black schools.

Q. The April 7 plan did draw these boundaries in an east-west direction, is that correct?

A. Yes.

***

[2376] GORDON FOSTER

was recalled as a witness for Plaintiffs, and being previously duly sworn, testified further as follows:

***

[2399] Q. Do you have an opinion, Doctor, as to the effect on Western of the inclusion of the Newberry School in 1964 in the Western attendance zone?

A. My opinion is that this would increase desegregation in Western.

Q. What, Doctor, would be the community perception about Western High School as a result of that inclusion?

A. In my opinion the community would perceive it as a move toward greater integration.

***

[2407] Q. (By Mr. von Ende) I believe you were saying, Doctor, that it was terminated by putting the Sherrill students into Mackenzie, is that correct?

A. Yes.

Q. In the year in which it was ended that was what, '63?

A. '62-63.

Q. What was –

A. That was the last year.

Q. What was the racial composition in the percentage of the Sherrill School at that time?

A. 1962-63?

Q. Yes, sir. Was it not predominantly black, perhaps 95 per cent or greater?

A. 98.9 per cent.

Q. What was Mackenzie at the time?

A. Mackenzie was 28.9 per cent black in 1962.

Q. In youropinion, Doctor, did not that decision have the effect of further integrating Mackenzie by the introduction of black students into Mackenzie?

A. Yes, it did.

***

[2545] [COLLOQUY OF COURT AND COUNSEL]

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[2548] . . .

THE COURT: Why don't you read them? I would like to listen to it. This is a deposition of Louise C. Grace?

MR. LUCAS: Yes, your Honor. This is in reference to questions as to faculty. The question is:

"I see."

The answer is:

"And he said that there was no – "

THE COURT: What page is that?

MR. LUCAS: Page 10, your Honor.

THE COURT: 10 and 11?

MR. LUCAS: Yes.

"–no definite policy as I remember the conference. That was the only time it was ever really brought out and discussed in my presence other than – that the difficulty was not any policy on the part of the Board. In fact, he had been trying to place Negro teachers in areas where there was all-white enrollment, but that he had some very sad experiences in certain areas where he would send colored teachers out in the morning, and in the afternoon none of the children would report to school. There wouldn't be

any class, and then a violent protest on the part of the parents, and when that happened he felt it was good, for the good of all the children in the school and the sake of peace in the community why the thing happened that the teacher was withdrawn and sent to some other area. He mentioned that as being the only – the chief difficulty in their attempt to place Negro teachers. [2549]

"He said several times in conferences, and I remember he would like to place more – that he would like to place more generally than he had been able to do at that time, but that circumstances arose not only in one area of the city but in several areas, and so he felt that until neighborhoods were somewhat – had changed their thinking somewhat, that it wasn't a happy circumstance for the teacher he sent out there. Some of the teachers who were sent out were very unhappy about it, I mean the Negro teachers who were sent out, some of the treatment they received. [2550]

"I think that the whole climate has changed now. I don't think that sort of thing happens. At least, I have not heard it happen. But it did back in those days. But, he told Mrs. Krolik that he was very sympathetic to that situation and he was doing everything that he could; that he was trying it out; that he was deliberately sending colored teachers out to see what the community reaction was. If it became too violent, why, he felt that that was something he had to consider, too. But, of course he then made the point that I referred to a few minutes ago, that there weren't so many qualified Negro teachers available."

[2551] THE COURT: That deposition was taken when and where as shown by the frontispiece?

MR. LUCAS: July 24, 1964, Exhibit 173.

MR. VON ENDE: Though the exhibit has been receive, I would say all Mr. Lucas read was hearsay, an unidentified "he" in conversation with –

MR. LUCAS: If I may identify the "he," it was the superintendent of schools at that time and this was a Board member.

THE COURT: The deposition would show that?

MR. LUCAS: Yes, it does. I can't pronounce his name, but I will try to spell it for the reporter – Mr. Dondineau, D-o-n-d-i-n-e-a-u.

Before we get to the other exhibits which Mr. Cauldwell presented to the Court, we have, as I advised the Court yesterday, we had in preparation the exhibit we marked as Exhibit 154-C which is the same pattern with respect to faculty for the 1970-71 school year. We have Mr. Lamson here, but I represent to the Court and counsel that it was prepared in the same manner and subject to any corrections which they may point out to us, and we would move its admission.

[2551-A] MR. VON ENDE: Our objections are only those noted as to 154-B in terms of its being not comparable with 154-A. We have no problem with Mr. Lamson's expertise or diligence.

THE COURT: The exhibit is received.

***

[2569] MR. CALDWELL: The Plaintiff's Exhibit 6-A, the purpose for introducing Plaintiff's Exhibit 6-A is that at this session of the Board the motion was made and carried that the Board express its agreement with the interim findings of the court in the Sherrill School lawsuit, and for that purpose I will offer the exhibit.

MR. VON ENDE: Mr. Caldwell, could you note where that resolution appears?

MR. CALDWELL: On the exhibit, third page. I'm quoting:

> "It was then moved that this body express itself as being in complete agreement with the interim findings and suggestions of the court, two of which have been proved already, the third being, according to the court, that the Board shall commit itself to propose other methods of speeding racial integration of students, and that the goal shall be achievement of substantial integration in high schools and junior high schools."

And then after discussion on the next page;

[2570] "It appears that the motion was then carried."

MR. VON ENDE: Your Honor, my objection is merely to the relevancy and probative value. I just don't see the probative value

of the fact of the Board's agreement in principle with the recommendations of the court.

MR. YOUNG: I would merely reiterate the statement that we were not parties to that lawsuit.

MR. CALDWELL: Your Honor, the exhibit is offered for this purpose: In the interim findings in the Sherrill School case – that was Civil Action No. 22092 – the court stated its finding as to the ineffectuality of the open school program in achieving integration. It also recommended that the Board should discontinue participation in any apprenticeship program which is not an integrated program, and it also stated, and I'm quoting from page 2 of Exhibit 6 which is the interim findings:

> "Substantial integration of faculty and professional personnel should be achieved in all schools by the beginning of the February, 1965 term."

Now, the Board minutes which I'm offering at this time, Plaintiff's Exhibit 6-A, merely express the Board's view that the interim findings were correct, and that the Board concurred in that view, and I think that it is [2571] relevant to that purpose.

THE COURT: The exhibit is received.

MR. CALDWELL: Yesterday, your Honor, I furnished counsel with copies of Plaintiff's Proposed Exhibit 147, 148 and 149. I had copies of those, extra copies of those for the Court. But they seem to have gotten lost. However, I will hand the Court the exhibits for reference while I offer them.

Plaintiff's Exhibit 147 contains copies from certain sessions of the Superintendent's Executive Committee. The first page is a copy of a page from the August 8, 1944 session, and the last page, which is numbered on the Exhibit 31, is from the Superintendent's Executive Committee session of November 1, 1955. All of these extracts pertain to certain actions and certain problems discussed at these meetings and brought up at these meetings and certain actions taken regarding housing projects, the need for schools. projected enrollments that would ensue from the opening of various housing projects. A few of the pages refer to, for example, the Herman Gardens project. Pages 1 and 2 refer to using facilities in the Herman Gardens project by the Board of Education. The

exhibits are offered, your Honor, for the purpose of, as Mr. Lucas previously stated, furthering our theory that the School Board has advantaged itself of the [2572] discriminatory practices and policies of other agencies of the state and as a result the racial identity of many of the schools in the system or at least some of the schools in the system are the result of this state action, whether directly or indirectly. The exhibits do show various communications and concerted actions on the part of both the School Board and the Detroit Housing Commission as well as occasionally the Department of Parks and Recreation.

I would offer the exhibit, Plaintiff's Exhibit 147 at this time.

MR. VON ENDE: Our objections are, your Honor, first hearsay, your Honor. This is no record of Board minutes. It is in-house administrative meetings, and for that reason it is obviously hearsay.

Secondly, your Honor, relevance and materiality. If these were offered to show that the Board had knowledge of where projects were located and/or that we had an obligation to educate the children who lived there, I would have no objection. But, counsel says that these are offered to show that the Board advantaged itself, and I don't believe they show that. I believe that they are argumentative and prejudicial, for more than probative value.

MR. YOUNG: I would only add to those objections that the period 1944 to 1955 which these cover is[2573] clearly remote in time and therefore not relevant.

THE COURT: Well, these are official records of the administrative department of the school system, and while they are hearsay, their reliability, of course, is patent, and they are relevant to the issues as I see them. Now, you are offering 147?

MR. CALDWELL: 147, yes, your Honor.

THE COURT: Now, this covers what period? '44 to what?

MR. CALDWELL: Through the last page as a session in 1955.

THE COURT: The exhibit may be received.

MR. CALDWELL: The cover of the exhibit, your Honor, contains what we have designated as an index, and it is broken down into the various projects, and the page references which pertain to those projects. I would note that most of the references – for example, in the first paragraph, the Jeffries housing project

references, most of those are questions which arise because of the projected need for schools, housing. Later on there are projections as to enrollment, anticipated enrollment when the project is opened, and then later on there are minutes reflecting the purchase of sites or, I think the Board minutes themselves reflect purchase of sites. But, these minutes reflect projects as to cost, [2573-A] suggestions as to site location, that sort of thing, communications with the Detroit Housing Commission regarding location of schools.

[2574]I would like to call the Court's particular attention to two references. One appears on page 17, paragraph 138, which reads:

"New buildings. Mr. Browe called attention again to the growing problem of housing the children in several areas, notably the Jeffries and Douglass Housing Porject areas. Mr. Harrington stated that Mr. Butler and Mr. Wheeler are working on these and will submit proposals as quickly as possible. Mr. Browe mentioned a six-room building on Pierce and Chene, built as a Lutheran school and now owned by a colored church. He thought this building might perhaps be rented to give some relief to the Campbell and the Norvell Schools. Mr. Lane urged that serious consideration be given to secruing new quarters elsewhere for the Psychological Clinic and the staff in Special Education, thus freeing the Clay Building for classroom use again."

And the other paragraph I would like to call the Court's attention to is on page 25.

> "School assignment for children in the Jeffries Housing Project. Third, fourth, fifth and sixth graders are to be transferred out of the Jeffries Project to the Custer Elementary School in [2575] September, 1954 in order to provide needed relief for the Poe and Franklin Elementary Schools. It is anticipated this arrangement can be effected at the Custer School since a gradual return of seventh and eighth graders from the Custer to the Higginbotham School is planned. Seventh and eighth grade children in the project will attend the Jefferson or Hutchins Intermediate Schools."

I believe that bears on the matters previously testified to, although at a subsequent date, regarding those schools and that

housing project. The document marked Plaintiffs' Exhibit 148 is in a similar format and contains official minutes of the Board itself, and for the same purposes I would offer Plaintiffs' Exhibit 148.

MR. VON ENDE: Same objection.

THE COURT: Same ruling. It may be received.

MR. CALDWELL: I would merely point out, your Honor, that in this exhibit all the references to the Herman Gardens Project concern lease of space by the School Board from either the United States or the Detroit Housing Commission, of space in the project for school use. The first page reference, page 2, refers to a lease from the [2576] United States of space in that project, and we have a copy of that lease which was furnished to us with some of the deeds regarding the Herman School. But, I don't propose to offer the lease itself. Plaintiffs' Exhibit 149 is a table prepared from Exhibits already in evidence which correlate the racial composition of the various housing projects, the dates in which they opened, and also the schools which service those housing project areas and the racial composition of those schools. The left-hand side of the page reveals the 1960-61 data. The right-hand side of the page reveals the 1970-71 data, and I would offer Plaintiffs' Exhibit 149.

MR. VON ENDE: The objection here, your Honor, is that this is argument. Counsel states that all the facts are in. I would so stipulate. This places in a tabular form facts form which Plaintiffs draw inferences. It is argumentative. They are going to argue that. But, I would share Mr. Marston's position that this does not constitute evidence and should not be so designated.

THE COURT: I will make the same ruling. It is a summary. It is argumentative, undoubtedly. But, it is a visual help to me in following arguments when they come. I will receive it.

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[2607] ALVIN SKELLY

was called as a witness on behalf of the Defendant and being first duly sworn, testified as follows:

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Q. Let me again digress slightly. You talked about bond failures. By that you mean what, sir?

A. Twice in the past 10 years the Board of Education was seeking to remedy these unmet facility needs and sought the approval of citizens under the law to obtain additional bond funds and in the last 10 years there were two failures. The bonding authority was voted down.

Q. By the citizens of the district?

A. By the citizens.

Q. Doctor, why did the Detroit School District have to seek voter approval for bond issues when under the law of this state other districts have certain bonding authority without vote of the people?

A. Well, this is a historic anomaly. Detroit as a first class school district has had what is the equivalent of 3 percent of the state equalized assessed valuation, whereas other school district have had five percent. Translated into arithmetic here the state equalized assessed valuation is around $5 billion. At the 3 percent level we would have a continuing authority with a ceiling of $150 million. We were always at the edge of that $150 million.

Q. As a matter of fact it was 2 percent originally?

A. At one time. The state legislature saw fit to give us the [2618] additional 1 percent a few years ago.

Q. Following failure of the bond issue, was it not?

A. Correct.

Q. As these bond issues failed, did the Board of Education seek further legislative relief?

A. We sought to persuade the legislature that the school district here had needs at least equal to those of other school districts in the state and probably far in excess. Recently the state legislature granted, in May of this year, the additional 2 percent authority and it was enacted finally by the Governor's signature just a short while ago.

Q. So as of less than six weeks ago Detroit for the first time

in history is on parity with every other school district in the state with respect to bonding authority, is that correct?

A. Right.

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COLLOQUY

[2708] MR. KRASICKY: Mr. Ritchie's argument is not logical. On the one hand he protests vehemently that the plaintiffs have not established a case against the Detroit Board, and on the other hand he says don't let out any of the defendants, because we are going to need them if there should be a remedy. Then he says, apparently testifying to the Court, the defendants Milliken and Kelley haven't done anything.

Now, there is nothing in the record to that effect, and I think Mr. Lucas has been guilty of it, also, testifying from the stand. Our motion is based on the proofs submitted by the plaintiff. That is what 41-B contemplates, whether or not they have established their case by the [2709] preponderance of the evidence. They have had six long weeks to do it in. They have had every opportunity to put in proofs, and I recited, I thought fairly, what the Governor was accused of doing and what the Attorney General was accused of doing, but no one testified to the fact that they didn't do anything.

I think we should stick to the record in the case, if the Court please.

Finally, when Mr. Ritchie suggested to this Court, and in all my years of practice I have never heard it suggested before, that this Court has the authority to define prescribed by law and give the superintendent all this power – well, I'm not going to labor that. But, I submit that is not the law. This Court can define what it means, but it can't prescribe the powers originally under our separation of powers, if the Court please.

Mr. Lucas never addressed himself to the proofs in the case. He talked about joinder at some length, and the Court in Cincinnati settled the issue. The Court said at this stage of the proceeding the Governor and the Attorney General belonged in. So, they stayed in and sat through six weeks of testimony, and

now the question is have they established the right to relief against them, not what some kind of remedy might be later on depending upon what the Court does.

Now, the fact remains that in this sensitive [2710] area of whether or not any of the defendants that I represent – and they are entitled to their good name, and let's not just go waving around hands that doesn't mean anything, because it means a great deal – whether or not they have done something affirmatively or knowingly failed to do certain things that have deprived the plaintiffs of their rights protected by the Fourteenth Amendment, and looking at that record fairly, they have not established their case by the preponderance of the evidence, and under the facts under the law they have not established a right to relief against us. This Court when it approved the Magnet Plan could have approved the April 7th Plan. The Court in its wisdom chose the Magnet Plan.

Apparently the argument I made to the Court doesn't stand in the way, and the fact remains that the record is conclusive that the regions that have been adopted under Section 2 of Act 48 have not impeded integration in the Detroit District. Mr. Lucas would somehow breathe life into Section 12. It is dead. Section 12 has no existence at this moment, and it hasn't had for some time. You know, we went to Cincinnati to argue whether or not this Court abused its discretion in granting an injunction and whether or not this Court properly dismissed the Attorney General and the Governor, and we were confronted without having filed an answer in this cause in defending Section 12, and the fact remains that that [2711] court in its wisdom said all of Section 12 is dead. It is unconstitutional. We note that in their opinion they did not cite one case that supported their holding. This is our own feeling. But it is the law and we followed the law. But, somehow it can't be resurrected for this particular hearing. It is dead. Then Mr. Lucas testified as to the hearings before the First Class District Boundary Commission, and he tried to wave it away by saying well, it is legislative history. He had an opportunity to put proofs in and he didn't use this opportunity, and that is not before the Court, and we ask the Court to disregard it.

In the final analysis, it is what have the State defendants done or knowingly failed to do on the record before the case, not how useful we might be later on if there should be a remedy. This

Court can join all necessary parties under Rule 19. But, that is a big difference than sitting here and defending a suit with serious charges such as these where on the record in this case they have not established their right to relief against us. If we are useful should there be a remedy, the Court can ask us to come back. It is no problem.

[2712] I represented to the Court that the state did not exercise any supervision over the allocation of funds between buildings within the School District. That has been turned around in regard to Section 3, and I think that has to be answered if even very briefly. About three years ago the legislature set up a program for disadvantaged children, special funds, and it tried to adopt criteria that would allow some kind of a reasonable system for the allocation of these funds. Presently the program works as follows: the legislature has appropriated $17.5 million for this year, and in adopting certain criteria these have to do with socio-economic deprivation and a high percentage of students with low achievement skills, and schools are rated on a scale, and grants are made from the $17,500,000 for those particular schools. That is how the program works. Of course, the state supervises the program, and the legislature has spelled out very carefully how it is to be conducted, and the citation for the section, if the Court please, is Section 3 of Act 312 of '57, MSA 15.1919(53). Sure the state pays out millions of dollars in support of the schools. And there is another section of this act which states what the money is to be spent for, and the legislature has exercised control. I cited that Lansing case that Mr. Lucas suggested.

Perhaps I didn't fully inform the Court [2713] of the proposition that that case definitively held that the legislature had plenary power over education for the Superintendent of Public Instruction, and this was prior to the Constitution of 1963. Since then the argument is based upon the non-legal opinion of Dr. Porter which Mr. – I guess I'm so upset with you I forgot your name. But, it is counsel for intervenor, Mr. Ritchie. Anyway, he made reference to this money paid out under Act 312 of '57, and there is a section that specifies the particular purpose for which the money can be used.

But, we can sit and hope about what Article 8, Section 3 means in the broad powers of the State Board. But, one thing is

crystal clear, and that is that in the area of enforcing the civil right to education, the power is in the State Civil Rights Commission, and we know the plaintiffs don't choose to join them as defendants.

Finally, in regard to the remedy, last Friday the Sixth Circuit Court of Appeals upheld the decision of Judge Keith calling for a very comprehensive integration of the Pontiac School District. The State Board of Education was not a defendant in this case, and Dr. Porter was not a defendant in this case. The Governor was not a defendant in that case, and the Attorney General was not a defendant in that case, and from the opinion in that particular case the Court [2714] ordered a plan for the integration of the school system at all levels, student body, faculty and administration. It was a very broad relief. Now, if there should be need for the State Board and the Superintendent of Public Instruction, should there be need for relief or a remedy, not relief, under Court Rule 19 I'm sure we will be back, and we will help the Court in any way we can. But, we are entitled to a ruling on our motions to dismiss under 41-B, and the decided cases is the Sixth Circuit indicate that the Court has to look at the record and determine whether or not by a preponderance of the evidence they have established a right to relief against us, and whether or not under the facts and the law they have a right to relief against us, and we submit they have not. Therefore, we respectfully ask this Court to grant both motions.

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[2715] MR. KRASICKY: May it please the Court, we are on behalf of the state defendants Milliken, Kelley, Porter and the State Board going to rest. We are not going to offer any proofs.

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[2732] MR. KRASICKY: Again for the record, if the Court please, as we indicated yesterday the State defendants, Milliken, Kelley, Porter and State Board of Education, rest and they stand on their motions to dismiss which have been filed with this Court under Federal Court Rule 41(B).

I asked Mr. Lucas this morning if he had furnished the Court with a list of his citations and he said no, he hadn't, and apparently there is some problem of getting a stenographer. I am

wondering if it wouldn't serve to have [2733] him write out in longhand the authorities that he relies on so the Court might act upon our motion without too much delay.

Unless the Court wishes us to be here further, we would like permission to leave.

THE COURT: You may leave. That is a matter entirely within your judgment.

MR. KRASICKY: Thank you, your Honor.

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[2958] MERLE E. HENRICKSON

thereupon resumed the stand as a witness on behalf of the Defendant and having been previously duly sworn, testified further as follows:

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[2962] . . .

Q. (By Mr. Bushnell, continuing) You mentioned that the 1960 part of the definition of "equal educational opportunity" at that point in time was site size as well as physical plant?

A. Yes.

Q. Will you elaborate a bit on that. Why was site size a concern?

A. Well, historically the sites that had been acquired for Detroit schools and the standards of outdoor physical education had grown over the years, but the schools in the inner city which had been built in the nineteenth century typically had [2963] sites of an acre or small fraction one way or the other. The school occupied virtually all of the site except a very narrow band of front yard. There was no physical education area and certainly no parking area. So this standard had grown over the years so that in the schools that had been constructed in the post-war period and the immediate pre-war period, particularly in northeast and northwest Detroit, had become a characteristic that an elementary school should have at its site a full city block which consisted of

usually four to five acres. From the site standard which we developed, working with the city agencies, we adopted site standards which provided or called for an objective of at least an elementary school site of five and a half acres, a junior high site of 20, and a senior high site of 30 to 35 acres. These site size standards became the basis of our site selection and acquisition, not that we always acquired all of that amount of land in the initial stage, but we selected sites which were capable of expansion to those sites.

Q. You say "we" established site standards of five and a half acres for elementary, 20 acres for junior high, and so on -

A. Growing out of the staff conferences with the city agencies these site standards were recommended to the Common Council and to the Board of Education and adopted by them in both instances.

[2964] Q. Were those site standards in any way directed by the State Department of Education at that time?

A. No, they were not.

Q. Or by the then site superintendent of public instruction under the constitution?

A. No. In deriving them we used standards of the National Recreation Association and attempted to adapt state standards at that time. I wasn't familiar with them.

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[3011] . . .

Q. Is there any resistance on the part of parents or of the community to transport primary kids?

[3012] A. Yes. There is a considerable reluctance to transport kindergarten and primary children to the point that we very seldom do transport kindergarten children.

Q. Or primary unit children, 1st, 2nd and 3rd grade kids?

A. When we go into a geographic transportation plan we start at least with the 2nd grade and sometimes with the 1st grade, but this is accepted with a great deal of reluctance.

Q. Why is it the policy to return children as soon as there is space available in their neighborhood at this elementary school level?

A. Well, both because of the expectation of the parents that they will and should have a school which their children can attend locally, and also because of the cost to the district of continuing transportation.

Q. You mean it is cheaper to build than it is to bus?

A. We made a comparison a few years ago, and I think the relationship is still approximately the same; that transportation over a seven year period will pay the cost of elementary school construction.

***

[3030] A. Yes.

Q. Should that also be shown on this exhibit?

A. Yes.

Q. Can you think of any others that perhaps should be shown?

A. Well, I can't think of any others at the moment. I'm afraid I'm losing confidence in my memory, but –

MR. CALDWELL: Your Honor, I don't have any objection to what the exhibit depicts in the way of boundary lines. I have some problems with its caption, though, which is argumentative. It draws a conclusion.

MR. BUSHNELL: The caption, if the Court please, is in the grand tradition of self-serving declarations that have been developed in this trial already by –

MR. CALDWELL: (Interposing) I don't recall a single plaintiffs' exhibit that made such a declaration, your Honor.

MR. BUSHNELL: It is just from where you sit.

MR. CALDWELL: We didn't style a single exhibit which improved segregation.

THE COURT: I think my memory supports that. None were referred to as segregation overlays.

MR. BUSHNELL: No, they weren't, not directly.

[3031] THE COURT: I think in view of your proposing to go into a different area at this time, and because the witness does have some reservations about the accuracy of the exhibit, he may want to reconsider it, and perhaps this would be a good time to –

MR. CALDWELL: (Interposing) We would have no objection to the addition of these things.

MR. BUSHNELL: I think Mr. Caldwell's point is well taken. It might better be restyled, and we will do that.

A. I would agree to that.

THE COURT: Before we recess until tomorrow, though, because I may forget later, and this has nothing to do with the testimony you have offered through Mr. Hendrickson, but I think he is the man to answer this question now because it occurs to me now, and my memory, I know, isn't very good, and I may forget to ask you later. I'm curious about one thing, and this is on the overall picture involved in this case. My recollection is that some figures which were either used here in the court or elsewhere indicated that the population of the city, according to the 1970 census, was something like 46 percent black, but that the school population was 65 percent black or non-white, etcetera.

A. Yes.

[3032] MR. BUSHNELL: Black, sir?

THE COURT: Yes. Was that black?

MR. BUSHNELL: That is black. We have another category for Mexican-Americans.

THE COURT: Because we are talking about projections, that's why I had this thought in mind. Has the School Board through its staff and particularly people like you, Mr. Henrickson, made a demographic projection both in terms of population of the city and also in terms of school population to, let's say, 1975, 1980? Do you have such projections?

A. I have not made a systematic demographic study since the inventory of facility needs, and that was not addressed to the racial question. It was addressed only to the question of numbers. So, I would have to say no, not of the racial prospects of the area

beyond the implicit conclusion of the mapping which shows those areas which have a very small child population at the present time, the prospect that those areas will change by the movement of young families into them, and that those will be black families. I think for given areas such as the Mumford area I have made some projections of the prospective growth beyond the present growth, and this again being black, growth of black child population.

THE COURT: Well, as a layman, Mr. Henrickson, I can't help but be impressed not only by the figures, but also [3033] by the visual depiction here of the exhibit about the change in the complexion of the city racially, and even as a layman I make some projections. When I see the maps of 1940, 1950, 1960, 1970, I sometimes visualize what the 1980 will look like, and as you notice, this case is all about segregation and integration, and I wondered whether you could shed any light on the prospective compexion of the school population in the city in terms of whether we go so far as integration is concerned, whether by this judicial help or otherwise if by 1980, let's say, the city becomes a city with a general population of 65 percent black and the school population of 85 percent black. How do you integrate such a system? You see, that's what I'm getting at. Now, the reason I asked you is this: that the purport of some of the testimony elicited from you by Mr. Bushnell I suppose is calculated to lead me to believe that some of the planning that you have done has been based on projections, and many of them have proven out. That's what I gathered from it, and that's why I ask the question about projections in the future, because I assumed that your planning continues apace in the same direction.

You are trying to foresee what is going to be your general population and your school population in the years to come as you have in the past.

A. Yes, and the conclusions of the analysis of age characteristics [3034] is that we are facing a rather rapid change over in the east side, in the Finney area, because of the great concentration of all your families there, and in the Ford area and the northerly end of the Cooley and Redford areas on the west side. It was some of these factors that we had in mind in the April 7th plan where we were attempting to make some balancing of those

far outer edges to slow the process, if you please, by diffusion. That was the background of that thinking.

THE COURT: I just wondered whether you had some projections you might give me, general ones that could be concluded from just seeing the map.

But, anyway, we will suspend at this point until tomorrow morning at nine o'clock.

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MR. BUSHNELL: Thank you, sir.

(An adjournment was thereupon taken until 9:00 o'clock A.M., Thursday, June 10, 1971.)

[3043] MERLE E. HENRICKSON

thereupon resumed the stand and, having been previously duly sworn, testified further as follows:

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[3074] . . .

Q. Exhibit 128-B shows that in 1966 the black population at Cooley was 15.2 percent. In 1967 it was 27.2 percent. In '68, 37.7. In '69, 59 percent, and in '70, 76.2 percent. Has that boundary change had any affect on going from 15.2 percent to 27.2 percent between '66 and '67?

A. That boundary change remained in effect only a year or two and then was again shifted, this time into Central. It has had the effect that that one group of students has continued in Cooley. The principal change in growth of black enrollment at Cooley, of course, has been a very rapid movement of black families into the Cooley area over that period.

Q. And an increase of black population of exactly 61 percent in the five-year period?

A. Yes.

***

[3214] . . .

Q. (By Mr. Bushnell) Beaubien is what we were talking about. On this Exhibit NN it shows Beaubien when planned and authorized was approximately 45 per cent black. When it was opened it was what, sir?

A. 61.5 per cent.

Q. Today it is 99 per cent plus, right?

A. Yes.

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[3257] DELMO DELLA-DORA

resumed the stand as a witness on behalf of Defendant Board of Education, and having been previously duly sworn testified further as follows:

CROSS-EXAMINATION by Mr. Lucas.

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[3304] THE COURT: (Interposing) Mr. Lucas, will you stop just a minute? I'm very curious about one of the statements you have made. English is not a required subject anymore in this state?

A. Has never been. As a matter of fact, the State of Michigan is probably the most decentralized in its authority for curriculum decision-making of any state of the union.

THE COURT: Well, do you think this accounts for the lack of ability to read and write among our high school graduates?

A. If it were not for the fact that Michigan experience in this regard is comparable to all other states in the union which do have this requirement. But, I doubt it, because it is [3305] required, as a matter of fact, by our local boards. All local boards do require English for graduation. It is not a state requirement.

THE COURT: It is one for graduation?

A. Yes, to the best of my knowledge every local board does require it.

THE COURT: That gives me a little reassurance, at least.

A. We have, in effect, state regulations in that every local board elects to do those things as if they were state requirements. But, they are not written, and they are not mandated through the state.

THE COURT: Kind of an unwritten rule, then?

A. Yes.

***

[3309] Q. You mentioned something about the difficulties in Detroit with regard to the shortage of money, is this a common phenomenon in school systems, urban and otherwise, throughout the country?

A. Yes.

Q. They are all dealing with those problems in the same sort of context, are they not?

A. I can only speak to the situation in Michigan but the newspapers would make it appear as if it is a generalized national problem.

Q. Is the situation in Detroit somewhat different from some of the surrounding school districts in Wayne County which you may be more familiar with because of your Intermediate School District role but in general the suburban community school? Is Detroit in a more difficult position in terms of money?

A. I suspect it is, it has a more difficult problem than most of the school districts, but not all of them in the surrounding area because some of the school districts have had relatively adequate industrial tax basis over a period of years and have not experienced a great deal of growth, for example. Dearborn, River Rouge and Ecrose would be examples of school districts which have had a long-time industrial tax base and have not experienced great increases in school population so they are relatively well off by way of contrast.

Q. In terms of a city such as Detroit and the needs of the Detroit [3310] School System, is this also a part of function of the state allocation formula? Are there disparities fostered by this between Detroit and some of the other suburban districts?

A. That would be my opinion. We do not have, in my opinion, equitable distribution of money for schools throughout the state.

***

[3360] THE COURT: I was just curious about the function of the intermediate schools not only near Detroit but elsewhere in the state.

Q. (By Mr. Ritchie) Along that line, Doctor Della-Dora, the City of Detroit, the first-class school district of the City of [3361] Detroit is a member district within the Wayne County Intermediate School District?

A. It is.

Q. How many other districts are there within the Wayne County Intermediate School District?

A. I believe there are a total of 36 or 37.

Q. The Wayne County Intermediate School District, does it have its own board?

A. Correct.

Q. With regard to the authority of the board then, the Wayne County Intermediate Board, has that board to your knowledge in the past ever exercised any supervisory powers over the City of Detroit Board of Education and the representatives acting under them?

A. It would be in connection with, for example, the person who handles child counting. He operates out of the Wayne County Intermediate District Office and does it for Detroit as well as for all other districts. That is a cooperative matter, however, and one in which all of the districts have concurred that they should have the intermediate district perform that function for them. It also processes the reports that are submitted to the State Department. It also checks with the State Department in some instances on the progress made with regard to compliance with state regulations, and so in those [3362] matters it would. With regard to curriculum, it would not have, any more than it would any other district supervisory functions.

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[3372] Q. The Court asked you with respect to the Wayne County Intermediate District some questions about its function. Has the district not received certain grants made directly to it for administration overall of the school districts within the intermediate [3373] area? I am referring particularly to the Civil Rights Act of 1964, Title 4, desegregation advisory projects.

A. I wasn't in the country at the time that that was in operation.

Q. You are familiar with the project, are you not?

A. Yes.

MR. BUSHNELL: I think that calls for hearsay, since Dr. Della-Dora was in Africa at that time.

Q. (By Mr. Lucas, continuing) This was a project that was operated by the Intermediate District, was it not?

A. Yes.

MR. BUSHNELL: Again, if the Court please –

THE COURT: (Interposing) He would know what the schools are doing. He came in during or before. He knows what they are authorized to do and what they received money for.

A. As I returned from Africa that project was winding up, and we overlapped by a few days, and we talked with the person who was then director and was leaving.

[3374] Q. Was that Mrs. Brodhead?

A. Clara Brodhead, yes.

Q. I will show you a document which I marked for identification as Plaintiff's Exhibit 180 and ask you if you can identify it?

A. I have seen it when it was first published in '67.

Q. What is it, sir?

A. It states, "Desegregation Advisory Project" – Mrs. Clara Brodhead, Director – same as author. Grantee: Wayne County In-

termediate School District. The project report hearing was supported by a grant from U. S. Department of Health, Education and Welfare, Office of Education. June 30, 1967.

Q. That is the date of the report, is that correct?

A. Yes.

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[3381]...

MERLE HENRICKSON

was recalled as a witness on behalf of Defendant School Board and having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION BY MR. CALDWELL:

Q. It is a fact, is it not, Mr. Henrickson, that every school which in 1960 was 90 percent or more black and which is still in use today is 90 percent or more black today?

MR. BUSHNELL: May I have the first part of that question, sir?

[3382] MR.CALDWELL: It is a fact, is it not?

MR. BUSHNELL: That what?

MR. CALDWELL: That every school that was -

MR. BUSHNELL: "Every school", all right. Thank you.

A. I have not examined that particular question, but I think there is a strong presumption that that is the case. I don't think of any exceptions.

MR. BUSHNELL: May I ask Mr. Caldwell if you are referring to elementary schools, or -

MR. CALDWELL: Every attendance area school.

MR. BUSHNELL: Elementary -

MR. CALDWELL: All of them.

Q. Let me show you, sir, Plaintiffs' Exhibit 150 and ask you if it does not reflect that fact both in the first line of the exhibit and in the asterisk footnote which appears to the second line?

A. This is what it says on the exhibit, yes.

Q. It is also a fact, is it not, sir, that while in 1960, 65.8 percent of the black youngsters in attendance area schools were in schools which were 90 percent or more black. Today 74.9 percent of those black youngsters - not the same black [3383] youngsters, of course - are in schools which are 90 percent or more black?

A. These are your figures.

Q. Does that sound out of place to you?

A. No.

MR. BUSHNELL: If the Court please, the exhibit speaks for itself.

Q. Let me ask you, sir, if Exhibit 129 does speak for itself to that fact?

A. This is what is indicated in Exhibit 129, yes.

Q. You spoke the other day, perhaps last week, of an optional area which existed and which allowed Jewish and Gentile youngsters an option to go to two different high schools. Do you recall that testimony, sir?

A. I recall that the Superintendent testified on that point.

Q. Do you recall testifying about it, sir?

A. I don't recall clearly whether I spoke on the point or not. I rather think that I did.

Q. What were the schools involved in that option, sir?

A. This was an option, as I understand it, which had been eliminated before the preparation of the first boundary guides. This involved students attending Mumford and Cooley and it involved, to the best of my knowledge, the students in the Fitzgerald area primarily.

[3384] Q. That would be in this area here, as reflected on the '59 overlay, Plaintiffs' Exhibit 109?

A. Yes.

Q. That involved Fitzgerald and perhaps Clinton Schools?

A. It involved an area between Mumford and Cooley including some of the Fitzgerald area, but as in the case of most of those options they were determined by the high school principals with-

out regard to elementary lines and I am not sure what it was. I had never had occasion to see that one on a map since it had been eliminated.

Q. The effect of that option as you understand it was that the Jewish youngsters went to Mumford and the Gentile youngsters went to Cooley?

A. This is my understanding, yes.

Q. And it is a fact, is it not, sir, that at that point when this optional area existed there was an attempt acted out to separate Jews and Gentiles within the system?

MR. BUSHNELL: If the Court please, I would object to the form of that question.

THE COURT: Well, something else that I have in mind here, this question; are we talking about a time before Mr. Henrickson was a part of the school system?

MR. CALDWELL: As I understand it, the optional area was eliminated between – let me ask him whether [3385] it was.

THE COURT: All right.

Q. (By Mr. Caldwell, continuing) It was eliminated after Superintendent Brownell came, and it was not in existence in 1959, and it would have been eliminated between '56 and '59?

A. That was my understanding of the situation. It was not something that we found at the time that we mapped the areas.

Q. Let me ask my question again. At that point there was an attempt acted out, was there not, to separate Jews and Gentiles within the system?

MR. BUSHNELL: This is prior to Mr. Henrickson's joining the school system. This has been established.

MR. CALDWELL: He testified about this optional area on direct examination, your Honor.

THE COURT: Yes. But, this goes to another matter, you see. You are asking him about events which transpired before he became affiliated with the school system and even before he made the studies, previous to his connection with the school system.

MR. CALDWELL: On direct examination, your Honor, Mr. Bushnell asked that exact same question in almost so many words.

MR. BUSHNELL: Do you have the reference [3386] to it in the transcript?

MR. CALDWELL: Yes. On page 2822 Mr. Bushnell said:

"Question: And at that point in history in this town of ours there was an attempt acted out, was there not, to separate Jews and Gentiles within the system?

"Answer: Well, yes. There was also such a separatist tendency."

THE COURT: Had you objected at that time I would have sustained your objection.

MR. CALDWELL: I liked the answer, your Honor.

Q. (By Mr. Caldwell, continuing) You stated, I believe, Mr. Henrickson, also on your direct examination that Plaintiffs' Exhibit 132 was not a useful measuring device.

A. I stated that I did not consider it a useful device, yes.

THE COURT: Now, just tell me again what 132 is.

MR. Caldwell: 132 is the exhibit which shows the percentage of black and white youngsters in the high school compared to their representation in the entire constellation

THE COURT: Yes, all right.

[3387]Q. (By Mr. Caldwell) If Exhibit 132 represented a technique which you yourself have also used, would you perhaps consider it more valid?

A. This is not a technique which I would use if I had data to compare the number of students enrolled with the number in the population, which is the customary usual technique which I have used.

Q. Plaintiffs' Exhibit 138, which is the document entitled "Characteristic of Present Racial Distribution and Estimate of Potential Impact of Various Changes and Policies" –

THE COURT: (Interposing) Just a moment, Mr. Caldwell. Mr. Rogers, will you look on my table in back of my chair? I have one or two copies of a list of exhibits which Mr. Lucas furnished me. Will you bring one of these in, and then you won't have to make reference to it. I can look at my chart. I like to have in mind what the exhibit is as you question the witness.

Q. (By Mr. Caldwell, continuing) You are familiar with that exhibit, are you not, sir?

A. I don't recall it by number.

Q. It is the exhibit which has been referred to as your report to the Task Force on Integration, I think.

A. Yes.

Q. On page 2 of that exhibit, sir, we find this: "A few locations [3388] such as Southeastern and Southwestern show substantially lower white enrollment at the senior high level than in their own feeder schools, indicating selective enrollment by white students in an alternate school: Finney or Southwestern." I think we can agree that the Southwestern is probably an error there. When you said that you meant Finnery or Western?

A. Yes, that should have been Western.

Q. That is true in other schools, is it not; that the representation of white youngsters at the high school level is disproportionate to their representation in the feeder pattern schools?

A. Yes.

Q. And it might also represent the same thing at those other schools, that is, selective enrollment in an alternate school?

A. Yes.

Q. And indeed it does, does it not? For example, in Murray Wright we find that the white kids are not represented in the high school in the proportions in which they appear in the feeder pattern schools.

A. The difference, particularly in the Murray - Wright area, is that there is a considerable out migration of families as their young achieve secondary school age, so that it is a very poor mathematical formula for the Murray - Wright area to compare [3389] the gross number of high school enrollment to the gross pupil population in the area. This is less true of the Southwestern - Western area in general where the population is quite stable, and less true of the Finney - Southeastern area where the population is relatively stable. There is a selective out migration of families as children reach secondary school age in the Pelham area.

Q. We know, do we not, that in the Murray - Wright area some of those white kids don't even go to high school; they drop out?

A. Yes.

[3390] Q. Some of them who can qualify go to Cass Tech?

A. That is true.

Q. Some of the Mexican - Americans go to Western for Spanish - American culture programs?

A. That is true.

Q. But some of them transfer out too, do you not know that, sir?

A. I think there is evidence of some transferring out.

Q. They transfer to one school, for example, Western, do they not?

A. For the Spanish - American culture program, yes.

Q. Referring to Plaintiff's Exhibit 138. If you would turn to page 12 of that document, please, sir. I believe you find this language, do you not:

"In operation Western appears to be still the school to which white students escape from prodominantly Negro surrounding schools."

A. Yes.

Q. In addition to the Murray-Wright white kids, the white kids of Southeastern and Southwestern, we know that white kids in Mackenzie also elect alternatives to the Mackenzie High School program, do we not? For example, those who can qualify go to Cass, some go to Chadsey for the food program there?

A. I do not directly handle any of the material relating to the transfers of students. I do know that students from all over the city have the option of going to Cass and Chadsey and I [3391] presume that some Mackenzie students do also.

Q. We know also, do we not, sir, that the white youngsters who live in the King High School area, in the Lafayette Park, Elmwood and Indian Village areas traditionally have gone to Cass Tech, have been able to qualify for that school and have gone there?

A. I know of some who have gone to Miller and to King. I know that some have gone to Cass.

Q. If we look at Plaintiff's Exhibit 132 we find, generally, do we not, that at those schools the representation of white students at the high school level is disproportionate to their representation in feeder schools?

A. Will you state the question again?

Q. We just talked about certain high schools where white kids elect altenatives or have alternatives and we find if we look at those same high schools in Plaintiff's Exhibit 132 that that is reflected in those percentages of representation in the high school level.

A. Broadly it is reflected in the percentages but the percentages in the cases that I pointed out are grossly distorted by the one case, the case I mentioned in testimony, that the younger children, younger black children in the Mackenzie area are over - represented in relation to the high school students.

In the Murray area the reverse situation [3392] is true so that this is a crude measure which I would not use, as I stated, to the extent I could find better material, more precise information to verify it.

Q. That is in the Mackenzie area you are talking about?

A. Mackenzie area and Murray - Wright. They are both distorted in different ways.

Q. Even if we were to concede that momentarily, that does not make Plaintiff's Exhibit 132 an unuseful measuring device, does it? It is also a device, is it not, which you yourself used in Plaintiff's Exhibit 138?

A. No, it is not a device I have used in the sense that you have used it, of using a mathematical number to indicate a percentage. I have not used it in that sense. I did use it, I used this kind of data in the Western - Southwestern area which are relatively stable areas to indicate that in the normal progression there were white students in the in the Southwestern area who did not attend Southwestern.

Q. Let's go back to the Mackenzie problem. Will you tell me again why Plaintiff's Exhibit 132 in 1960 – as I understand it there is some problem about a feeder school not really in Mackenzie?

A. Yes. There were two ways in which the enrollment of black students at the elementary level was overstated. One is that all of the Winterhalter and McKerrow areas which were, in fact, [3393] an optional area were shown, were counted in the Mackenzie area, but in addition to that area which is as optional, there was another band between there and Dexter where students also attended McKerrow and Winterhalter and went from McKerrow and Winterhalter to Central, but these were counted in the tabulation as being in the Mackenzie constellation. So that the number of students at the elementary level in the Mackenzie constellation is overstated. That was the first point of objection.

Q. Let me take up that point right now, then we will get to your second point. The Winterhalter - McKerrow areas that you are talking about are those schools, part of which were in this optional area between Central and Mackenzie?

A. Yes.

Q. So that is one of the factors which throws Plaintiff's Exhibit 132 off in 1960. What is the other factor, sir?

A. It is not just the factor of the optional area, it is also the factor of this belt over a block and a half to two blocks wide which was not in the Mackenzie area at all where students did go to Central High School and this area, the total enrollment of Winterhalter and McKerrow was counted in the Mackenzie area.

Q. We could agree then, could we not, that Winterhalter and McKerrow zones, they were in the Central High School boundary [3394] area?

A. The students in that belt along Dexter were in the Central feeder pattern, yes.

Q. What was the other factor?

A. The other factor is that in the Mackenzie area there was occurring a movement of young families whose children appeared in the elementary schools who did not have older children in the secondary schools, that is, there was a disproportionate load in the elementary schools which got counted here and tend to skew the whole comparison. The formula implies that all children at all ages are equally represented in the area and this was not the case in the

MacKenzie area. It is not the case in any area where young families are moving in.

Q. All right, that is Mackenzie. You mentioned one other specific instance where we had a simialr type of problem, did you?

A. I don't recall whether I mentioned Cooley or Mumford. The same thing, the same phenomenon is true in any area such as Cooley or Mumford where young families were moving in.

Q. Are those the only two situation in 1960 which you can think of which fall in the category that you have described?

A. If you want to limit the question to 1960 I think they would be, yes.

Q. With regard to your transportation to relieve overcrowding policy, when do you determine to transport kids from one [3395] school to another, at what level of overcrowding is my question?

A. There is not a fixed mathematical formula and there has not been. One of the recommendations of the Integration Task Force was that the point at which transportation should be undertaken should be lowered and I think in order to maintain a class size not to exceed 32. Actually, I think that the earlier transportation before that time, transportation had not usually been resorted to until the class size was at a point of 36 to 40.

[3396] Q. In 1960 you would say that that was probably the standard used?

A. I think this was generally the case; that an area was not red flagged for emergency until it reached class size in the neighborhood of 36.

Q. On looking at Plaintiffs' Exhibit 63 – let me back up just a moment. On Plaintiffs' exhibit, whatever the under and over capacity maps are, all the schools which appear on those maps are schools which are either 50 under capacity or 50 over capacity. That was Plaintiffs' Exhibit 110 series. But you don't necessarily transport kids, if I understand your question, just because there might be 51 kids over capacity?

A. That's right. It was not a number. It was determined more on the basis of class size, and we actually used the two devices for spotting them. The sheets on which we computed the over and

under also showed a percentage over capacity or under capacity. We used those percentages to review the situation, and we reviewed the over and under maps as well.

Q. Looking at Plaintiffs' Exhibit 63 now, in 1961 I think it is safe to say that in only one instance, that of the transportation from the Poe to the Trowbridge, did you transport under 50 kids?

MR.BUSHNELL: I would object to the form [3397] of that question. It is counsel's opinion.

MR. CALDWELL: I will restate the question.

Q. (By Mr. Caldwell) Plaintiffs' Exhibit 63 reflects that the only school in 1963 wherein you transported less than 50 youngsters was from the Poe to the Trowbridge.

A. I'm a little puzzled about the listing of that Poe to Trowbridge transportation in that report. As I recall that is two students who were listed as special education students. We transported special education students in many situations, and I don't know what was unique – in small numbers, and I don't know what was unique about this report that they got included on the report. To the best of my judgment they should not have been included on that report.

Q. I need to restate my statement about Plaintiffs' Exhibit 63. It reflects that two students were transported from the Goldberg to the Trowbridge. I'm excluding those words "in district transportation", of course.

MR. BUSHNELL: Keep going, sir. There are several others.

MR. CALDWELL: I say I'm excluding in district transportation.

Q. (By Mr. Caldwell, continuing) At any rate, you generally don't transport less than 50 kids. Do you find that you usually see a number which are 80 and above, some which are [3398] 100 and above, and a number which are 200 and above which you transport?

A. Most of the buses carry 50. If we transport we usually send a busload or two busloads.

Q. I'm really not going to question anything about how many kids were transported. I was really trying to determine if a school is less than 50 over capacity you generally don't have to transport

kids. You usually don't find that transportation is necessary in that smaller number of over capacity kids, is that right?

A. Yes, this generally would be the case. Of course, schools vary in size, and 50 over capacity would be a considerable overburden to a small school that had a capacity for only 250 kids.

MR. BUSHNELL: If the Court please, might I ask that the time be established in this question?

MR. CALDWELL: The time was established in the beginning of the question as 1960 -1960.

Q. (By Mr. Caldwell, continuing) Now, in 1965 you were transporting what, a fourth of the kids that you transported, or perhaps a sixth of the kids that you transported in 1960?

A. By 1965 transportation had fallen to about 1500, since we had at that point completed construction.

Q. And the Task Force on Integration in 1967 recommended that [3399] you do more transportation to relieve overcrowding?

A. Yes.

Q. Now, as I recall your testimony – well, perhaps I had better have you recall it. What was the policy with regard to transportation to relieve overcrowding in 1960? What were the factors which were considered? To make it short, what I'm getting at is I want to find out whether the policy differed from when the integration limitation was placed on the policy.

A. The policy in 1960 was that the transportation should be to the nearest school which had the capacity and which had the prospect of having capacity to keep the students in about the same number for a period of at least two years.

Q. And this was the policy stated in the 1960 Administrative Handbook?

A. Yes.

Q. And I believe you read into the record from there. That was marked Defendants' Exhibit P and Q. You read those pages into the record. Now, when did this policy change?

A. This policy was only modified in '66, not basically changed but modified to make it clear that the Superintendent had some discretion to exercise judgment about the impact on the receiving school.

Q. Now, is that the same policy which you read from in the minutes [3400] of the Board of Education?

A. Yes.

Q. Is this the Administrative Handbook, Defendants' Exhibit P and Q,is that the handbook which is still in use?

A. That is the first edition of the handbook marked experimental, or something of that sort.

[3401]Q. Yes, experimental edition.

A. It has been revised a number of times over the decade. The portion which I read is still in the handbook, I believe, except as it may have been revised to incorporate the '66 language.

Q. In the 1966 edition, let me show you Plaintiff's Exhibit 90, and from all I can understand this is the handbook which is currently in use?

A. Yes.

Q. And what is the Administrative Handbook used for by the system, its personnel?

A. This is a document that is used by administrators throughout the system in order to provide in a single place and convenient an indication of Board policy on a great variety of matters, and an indication of procedures to be followed.

Q. Would you turn to the section in that handbook, and if I remember correctly it is about page I - 37 which pertains to overcrowding policy. Is that the correct page, sir?

A. Yes, I believe so.

Q. And does that policy as stated in the 1966 handbook differ in any was from the 1960 handbook?

A. It appears to be the same language as the '60.

Q. You do not find in that edition, do you, sir, the integration limitation which was placed on transportation?

[3402] A. No.

Q. Would it be safe to say then that perhaps that limitation was placed on the transportation policy after '66?

A. I don't understand your continuing references to an integration limitation.

Q. I would be happy to have you define it any way you would like. I'm just using that as a shorthand phrase.

A. It is a matter of the superintendent's discretion in integration matters. It is not a limitation on the superintendent. It is a broadening of the authority of the superintendent to exercise judgment.

Q. Defendant's Exhibit T on page 321 of the 1966-67 Board minutes, and the Board minutes are dated January 10, 1967, it lists information criteria under policy statement to relieve overcrowding. One of those is the receiving school would be one which can best accommodate the assigned pupils and provide them with maximum opportunity for quality education. Now, is that the change in the policy that you are referring to?

A. Yes.

Q. I think we could say then that it was not adopted until 1967, could we not?

A. If that is the date of the minutes, that would be the case, yes.

Q. In your direct examination you testified that the transportation [3403] in 1960 of youngsters from Edmonson to Balch was a white to black transportation, do you recall that testimony?

A. Yes.

Q. In fact, it was not, though, was it? Plaintiff's Exhibit 63 reflects that Edmonson in 1965 was 71.5 per cent black; that Balch was 92.1 per cent black.

A. In fact, I testified that this transportation was a result of the fire which destroyed the Tilden School in August that summer. This transportation, although it was listed as from the

Edmonson, since the Tilden School was gone at that point, and there was no longer a Tilden service area, was from the area which had been served by the Tilden School which was a predominatly white area.

Q. I think, sir, that will appear much clearer in this examination than it did in your direct examination. With that exception, sir, of the transportation from Edmonson to Balch which was really the transportation of the former Tilden youngsters to Balch necessitated by the burning of Tilden, there is not an instance, another instance since 1959 where predominatly white youngsters have been transported to a predominatly black school, is there?

A. I think that is correct.

[3404] Q. I think we can also say the same with regard to change in feeder pattern and zone lines, could we not? That is, not a single instance of such changes in 1959 has ever resulted in placing a predominatly white school zone in a predominatly black feeder pattern?

A. No, we couldn't say that. Certainly the elimination of the Western-Southwestern opion was not such a change.

Q. Perhaps we are not using the same terminology. I am talking about changes in the feeder pattern and changes in zone lines, and the elimination of the Southwestern-Western option was not such a change.

MR. BUSHNELL: Is that a question or argument, if the Court please?

Q. (Continuing) – was it?

A. I don't recall the situation at this point. I would say if it exists I don't recall one.

Q. I am placing Defendants' Exhibit R on the board. Defendants' Exhibit R is the overlay, Mr. Henrickson as you will recall, which shows the transportation to relieve overcrowding in November of 1960, I believe.

A. Yes.

Q. Under that exhibit as you used it on your direct examination is Plaintiffs' Exhibit 110-A, which is the over and under

capacity map. Mr. Henrickson, let me ask you to step down here, [3405] if you will, please.

(The witness left the stand.)

Q. We find on the under and over capacity map in the Higginbotham area that there were three schools surrounding Higginbotham. Vernor, which is listed as being 121 over capacity; MacDowell, 103, is it? Pasteur, 90. At the same time we find that Higginbotham was 489 under capacity. Is that what the exhibit shows, sir?

A. Yes.

Q. We also know, do we not, that Pasteur, MacDowell and Vernor were white schools?

A. Both Pasteur and MacDowell at that time, as I recall, had some beginning of black students as a result of the growth of the settlement of the Higginbotham area.

Q. They were predominatly white schools at that time?

A. Yes.

Q. Higginbotham was all or virtually all black?

A. Yes.

Q. Indeed, it had been the same in 1950, had it not?

A. Yes.

Q. At the same time that we are talking about you were transporting youngsters from Angell to Higginbotham, is that correct?

A. Yes.

Q. Those were black kids being transported from Angell to [3406] Higginbotham?

A. Yes.

Q. We also know on that exhibit that they were transported past schools such as Fitzgerald and Clinton which had more than enough capacity to handle them?

A. We have made no denial of that.

Q. I am not suggesting that you have. I am just asking you for the answer.

A. That is the case and I think we have been over this several times.

Q. You stated, sir, on your direct examination that the Angell-Higginbotham, the Angell to Higginbotham busing was eliminated when the Jamieson was built?

A. Yes. The Jamieson School took over some of what had been the Angell service area.

Q. I believe that is as far as we went in your direct examination. That was just left hanging but that was not a justification, was it, for continuing to bus black kids past white school with space to an all-black school?

MR. BUSHNELL: Objection, if the Court please. That is argumentative.

Q. That was not a valid administrative reason, was it, sir?

A. The administrative reason for continuing transportation was the reason that we discussed the other day of attempting to [3407] provide some continuity of experience for the children and since there was a prospect of continuing this, or discontinuing this within a short time with the completion of the Jamieson that it was continued rather than changed.

Q. In his direct examination Mr. Bushnell in numerous questions suggested that you discovered all of these things at some point in time. The school system knew in 1955 what youngsters were being transported to where, did they not?

A. There are records of transportation which I have back to about 1955 that were issued monthly in the same form as the records that have been made as exhibits in this case.

Q. Although you may have discovered it when you came to the system in 1959, the system didn't discover it at that time, did they?

A. I think Dr. Brownell was quite aware of it. He had been made aware of it by some community concern about it.

Q. In 1967, I guess, perhaps later than that or perhaps before that, you were transporting youngsters from the area now –

A. (Interposing) From the Keating area.

Q. Yes, the Keating area, thank you. Where the Stark Elementary School is now built?

A. Yes.

Q. Those were black kids you were transporting, I believe you testified?

[3408] A. Predominatly black. There were some white children mixed among them.

Q. To the Hanstein, Trix and Marquette, which were predominatly white schools?

A. To the Hanstein first, then the -- the Hanstein and Marquette. I think we did not transport any of those at any time to the Trix. That is a different transportation.

Q. How long did that transportation continue, sir?

A. Until the Stark was completed in the fall of '68 or '69, I don t recall.

Q. When did it begin? I have forgotten.

A. The transportation – one of the maps –

Q. (Interposing) I only placed one of them up there.

MR. BUSHNELL: I think they are over here.

A. I think the transportation to the Hanstein alone had started in '65.

Q. Yes, sir. It does show on the '65 map which is Defendants' Exhibit S.

A. And it was then increased by additional transportation to the Marquette in the following semester.

Q. You built Stark Elementary for the purpose of relieving this situation?

A. Yes.

Q. And do you recall, sir, what the percent black was of Stark [3409] Elementary when it opened in 1969?

A. It was virtually all black.

Q. At that time Hanstein and Marquette were still predominatly white schools, were they not?

A. Yes.

Q. And they are to this day?

A. Yes.

Q. The effect of eliminating the transportation, sir, had an adverse effect on integration at Hanstein and Marquette, did it not?

MR. BUSHNELL: Objection; conclusionary, argumentative.

THE COURT: He may answer.

A. Yes, the termination of any transportation which had the effect of integration would abviously have the opposite effect on its termination. There was the option which these students had of continuing to attend these schools if the parents so chose.

Q. That is by transportation at their own expense?

A. Yes.

[3410] Q. We find the same situation, do we not, when the transportation from the Williams School was discontinued?

A. Yes.

Q. Do you recall where that transportation was to?

A. The transportation from the Williams School, at least the termination of the transportation was under a different circumstance.

Q. Let me interrupt you just a minute. Defendant's Exhibit U reflects that the transportation was from the Williams School to the Law School?

A. Yes.

Q. The Law School being a predominatly white school in northeast Detroit?

A. Yes.

Q. Is that correct?

A. Yes.

Q. If you remember where you left off in your answer you may continue.

A. The transportation from the Williams School was discontinued in order to permit the children living within the Williams area to be eligible for the class size reduction programs which were funded on the basis that the residents of the area would be eligible if they were attending school in that area and

would not be eligible for the class size reduction in [3411] the Law School.

THE COURT: May I interject a question?

MR. CALDWELL: Yes, certainly, your Honor. I would be happy to have you.

THE COURT: You say there was a policy which permitted the parents of children who had been transported to relieve overcrowding to continue after the public transportation or the school transportation was provided?

A. Yes, and to continue in the feeder pattern.

THE COURT: Tell me, do you know whether that privilege was exercised?

A. I don't know whether it was exercised in this situation or not. Probably not by any substantial number since the public transportation to the Marquette and Hanstein was certainly not very convenient for the students. There were other situations particularly on the west side where this option has been exercised to continue from the Murphy, for example, into Redford High School.

THE COURT: I was curious about how many people, if any, took advantage of that privilege?

A. It would be very small numbers at the elementary level, just as there were very small numbers that elected to move to outlying school under the open schools arrangement.

Q. (By Mr. Caldwell) I believe you testified that the transportation [3412] to the Law from the Williams was eliminated in order to qualify for the Model Neighborhood program?

A. The Model Neighborhood and other class size reduction projects and there were also some Section 3 funds involved there.

Q. At the Williams School?

A. Yes, the Williams School.

Q. We could agree, could we not, that the elimination of that transportation had the same effect on integration as the elimination of the Keating area to Hanstein and Marquette?

A. Yes.

Q. With regard to the Model Neighborhood program, has the educational unit of that program been eliminated this year or recently?

A. There has been some change in the organization of the Model Neighborhood Organization. I have not been able to follow it closely. The change in the internal organization is not the same as elimination of the contract funds to the Board of Education and there will be some contract funds to the Board of Education next year at a reduced level, as I understand it.

Q. At about what percentage next year at the Model Neighborhood funds will you get as compared to this year? Are they reduced by half?

A. By at least half.

[3413] Q. Let me place on the board Defendant's Exhibit W. We see on this exhibit that youngsters were being transported from Post-Hally-Clinton area, some of them were being transported to the Lessenger and some were being transported to the Jefferson Junior High. Lessenger is a predominatly white junior high school, is it not?

A. Yes.

Q. Jefferson is a predominatly black school?

A. Yes.

Q. Transportation in both of these instances is that of predominatly black youngsters?

A. Yes.

Q. I believe you stated, sir, this is February, 1971 transportation, Defendant's Exhibit W, and also let me ask if that transportation existed in October of 1970, in other words, at the beginning of the 1970-71 school year?

A. Yes, this has been during the 70-71 school year.

[3414] Q. This was on some sort of volunteer program, if I recall your testimony, whereby you solicited youngsters to volunteer for this busing?

A. Yes.

Q. Also as I understand your testimony the initial plan was to bus all of the kids from Post to Lessenger, or to solicit all of them to volunteer to be bused there?

A. No. I indicated that the Lessenger had been the first point to which volunteers had been solicited. As I recall, that had started the previous February. But, I'm not sure of that. What I did indicate was that Lessenger took as many as in the judgment of the region administrator it could receive, and beyond that point the others volunteered to go to Jefferson.

Q. You were transporting about what, 80 kids in each instance?

A. There were more being transported to Lessenger than to Jefferson.

Q. You transported about 80 to Jefferson?

A. Yes. These were listed as Clinton-Lessenger and Post-Lessenger, or I mean Hally-Lessenger and Post-Lessenger, and also as Clinton and Post to Jefferson. So, there were two different listings.

Q. You say that the regional superintendent determined that Lessenger couldn't handle any more of these kids on that basis, that that necessitated sending the remainder to Jefferson?

A. The number to be received had to be determined in the spring, [3415] and the number that could be received was judged to be 100, as I recall, and beyond that point the region administrator anticipated shiftovers from parochial schools and so on and was reluctant to take any more because of the uncertainty of what his enrollment would be.

Q. These apprehensions didn't bear out, did they?

A. I don't recall what the over or under capacity at Lessenger was in September.

Q. As of October I believe the Plaintiffs' Exhibit 2 or rather the overlays there reveal that it had capacity. I didn't write down how much. 30 spaces it had. Let me turn your attention, Mr. Henrickson, to the Parkman Elementary School. As I recall your testimony you agreed with Dr. Foster that that school was taken out of a Mackenzie High feeder pattern in 1968 and placed into the Cody pattern, is that correct?

A. Yes.

Q. And the Parkman School is this school which I'm pointing to in the eastern jag of the Cody area, Cody being the high school to the west, and Mackenzie being the high school to the east. I believe you also agreed with Dr. Foster that that change in feeder pattern and boundary took a predominantly white school from the Mackenzie area and placed it into a predominantly white high school area as opposed to the Mackenzie area being predominantly black.

[3416] A. Yes.

Q. Would you agree with me, sir, that that change in feeder pattern had the effect of reducing the number of white youngsters in the Mackenzie High School area?

A. Yes.

Q. The next year you are going to take Ford out of the Mackenzie area, also, that is, the Ford Elementary-Junior High School.

A. That is correct.

Q. Will you agree with me, sir, that that also will have the effect of taking white yountsters out of Mackenzie?

A. Yes.

Q. Even at the present time Mackenzie is 96.8 percent black, is it not? Let me say that Plaintiffs' Exhibit 128-b reflects that, and does this accord with your knowledge?

A. Yes.

Q. Mr. Bushnell asked you a question on page 3242 of the transcript, or at any rate it has a question mark at the end of it, that question being, "Let me give you some figures. In 1968 Mackenzie was over capacity 1,075, while Cody was over capacity 323. Does that refresh your recollection?" And then the ultimate answer is: "Yes. This represents substantially the situation, I'm sure." Now, as I understood your testimony, and you will forgive me, but I think that you also left this dangling, you stated those capacity figures, but did you state[3417] that that was the reason the change was made?

A. No. I stated that the reason the change was made was that this was the initial plan for the Brooks service area. The Brooks

service area was to feed into Cody. Now, the only point at which there has been any consideration or basic change in that service pattern was when the proposals were made for April 7th, which were proposals for cutting the Brooks service area and returning some white students to Mackenzie. But, that plan didn't go through, did it?

A. The plan was stopped by legislative action.

Q. What is stopping it now?

A. It is my understanding that the region has authority to decide how to use its buildings.

Q. Are both Mackenzie and Cody in the same region?

A. Yes.

Q. It is the determination of that region that not only should Parkman go to Cody, but the other majority white school in the Mackenzie area should also go to Cody?

A. The change in feeder pattern is initially an action of the region, yes.

Q. Is it a fairly consistent pattern that you try to equalize capacity between two high school areas?

A. Yes.

Q. Is that the purpose of this change in the Parkman in 1958?

[3418] A. Yes, along with having an articulated system with all of the junior high students proceeding together into Cody.

Q. Prior to 1968 did the Parkman elementary youngsters attend Cody?

A. Prior to '68 they attended Mackenzie.

Q. Where did they go to junior high school?

A. They went to the Ford which was a temporary junior high pending completion of the construction of the Drew and the Brooks,

Q. So, in 1968 we find that they had an articulated feeder pattern at that time?

A. Yes, through a temporary junior high school, that is true. That was one of the reasons they were left there.

Q. Can you tell me, sir, what the purpose was of talking about the relative capacity between Mackenzie and Cody with regard to the Parkman situation?

A. This was to indicate that the senior high enrollment in the Cody area is falling slightly at this time while the Mackenzie enrollment is rising, and this has the effect of balancing the load between the two high schools.

Q. Mr. Bushnell stated that Mackenzie in 1968 was over capacity by 1,075, and Cody was over capacity by 324. Picking up where his math leaves off, that is a difference of some 751 between the relative over capacities of the two schools. In other [3419] words, Mackenzie has 751 kids more over capacity – or I mean Mackenzie has that than Cody does.

A. Yes.

Q. We also find in 1968, though, if we look at Redford and Cooley practically the same pattern in reverse: that is, Redford being a school with about 600 kids more over capacity than Cooley. Did you make any change in the Redford area in 1968 which resulted in placing elementary schools out of the Redford constellation in the Cooley?

A. No. We were not constructing any junior high schools that would affect the pattern there. The construction of Brooks was intended to affect the feeder pattern here.

THE COURT: Mr. Caldwell, we will take a recess.

(A recess was thereupon taken.)

[3420] Q. Mr. Henrickson, directing your attention to Plaintiff's Exhibit 109-A, we have a number of areas which have hash marks on them. What are those areas, sir?

A. These are the areas from which students at the time indicated electing to go to either one of the two high schools as their area school.

Q. We call those optional areas, don't we?

A. You have frequently referred to them as optional areas, yes.

Q. Have you ever referred to them as optional areas?

A. In this case.

Q. Did you refer to then in 1967 as optional areas?

A. I don't recall if I did.

Q. On page 7 of Plaintiff's Exhibit 138, this is a list following the Central School district where useful results might be realized: Region 1, eliminate Western-Southwestern option – the word "area" does not appear but you did call it an option, did you not?

A. Yes.

Q. Mr. Bushnell's repeated questions that plaintiff insists on calling these optional areas could also be directed to the School Board and the staff, could it not? These have been known for ten years as optional areas, have they not? It is not something plaintiffs created, the terminology?

A. I think they have been referred to sometimes as optional areas. [3421] We eliminated most of them within a couple years so that we had no need for such a name.

Q. In 1959 optional areas frustrated integration, did they not?

MR. BUSHNELL: Objection to the form of the question.

THE COURT: He may answer.

A. Some of these areas in 1959 had no effect whatever with movement of black or white students. They were either all black or all white. Some of them such as the Western-Southwestern area can be said to have frustrated integration and continued over the decade.

Q. (By Mr. Caldwell) In your notes which you so kindly provided us and allowed us to examine, the section which deals with the Northern–Northwestern area on the second page of that section which is page number 4, we find a paragraph marked in parentheses "(c) existence in 1950. Foster page 5, Foster page 2398 admitted he didn't know since Merle was not examined – 2, Does Merle know."

MR. BUSHNELL: Excuse me, your Honor. If this is a question I am objecting and interrupting. If this is a question based on plaintiff's examination of Mr. Henrickson's notes I have no objection. I do object, however, to the notes being read into the record and counsel testifying from those notes. I just might add for the sake of the record [3422] that the notes that were provided plaintiff's counsel at their request included all of the notes put on this outline by Mr. Henrickson, by myself and by my

colleagues. This is perhaps the most complete set of notes that these gentlemen will ever see in their entire professional life and I do object to comments being read that are on there, that particular one was put on by my colleague Eagan.

THE COURT: I won't comment on the puffing.

MR. BUSHNELL: I'm selling, your Honor.

THE COURT: You may examine the witness but you may not introduce the notes.

MR. CALDWELL: Thank you.

[3423] Q. At any rate, I would ask the same question, Mr. Henrickson. Do you know when the Northern-Northwestern option, or do you know how long it existed?

A. No, I do not. I know simply that the particular area because of its geographic situation was relatively convenient to Northwestern and relatively convenient to Northern, and that for a long time there had been students going to Northwestern from the area after attending Hutchins, which is normally fed into Northern.

Q. A number of those optional areas had existed for some time prior to 1959, is that not correct?

A. I could not place any date on that. I would have no basis for knowing how long they had existed except that it had been for several years, and I suppose that this is at least during the previous decade to '60.

Q. I'm placing under the overlay marked Plaintiffs' Exhibit 109-A, which is the 1959-60 boundary lines, Plaintiffs' Exhibit 136-A, which is the 1950 census map. Would you step down, sir, to the map?

(The witness complied.)

Q. (Continuing) Now, in 1950 we see on the census map that the optional area between Central and Mackenzie is all white, that being represented as 0 to 5 percent on the census map, is that correct?

[3424] A. Yes.

Q. But, in 1960 we know that we had a substantial portion of orange with some green and blue in that area, do we not?

A. Yes.

Q. Indicating that the area was an area in transition racially.

A. I think the Winterhalter enrollment, Winterhalter racial data shows that it was already predominantly black.

Q. By the same token, you observe on the 1950 census map that the optional area between Northern and Northwestern was about 50-50 green and white with some blue represented in all instances as less than 50 percent black in 1950?

A. Yes.

Q. And with regard to the optional area between Western and Northwestern and the — well, let's talk about the Western-Northwestern. We observe in the 1950 census map that it is about 60 percent green, small portions of blue, orange and white, with the exception of the orange area representing that that area was also under 50 percent black, is that correct?

A. Yes.

Q. And with regard to the Newberry option between Chadsey and Northwestern we find that the eastern portion of that option's orange and the western portion of that option is green.

A. Yes.

Q. And in the optional area between Northern and Central which [3425] represents the Doty elementary zone we find that about half of that zone is green with a small tinge of blue, and the other half is white, again representing under 25 percent black in that instance mostly, is that correct?

A. Yes.

Q. At that same time we find in the Northern High School area substantial portions of red, orange, with some portions of white and green, is that correct?

A. Yes.

Q. While the Central area, high school area, is almost all white with the exception of the Northeastern corner which has some orange in it and some tinges of blue and green around the southern edges, is that correct?

A. Yes.

Q. And of course the Southwestern optional area was white in 1950, that is, the area between Southwestern and Western was white in 1950.

A. Yes.

Q. And indeed we know that it was white in 1960 and white in 1970, do we not, sir?

A. Yes.

Q. We also know that that optional area consists of mostly if not all white students, is that correct?

A. Yes.

[3426]MR. BUSHNELL: Now, I object to the form of the question.

MR. CALDWELL: He didn't seem to have any difficulty answering.

MR. BUSHNELL: If Mr. Henrickson can testify, that is fine. But, who knows? The antecedent is what I'm objecting to.

MR. CALDWELL: I fail to perceive the objection, your Honor, in view of the fact that he was able to answer it.

MR. BUSHNELL: If you want to ask what was the racial characteristic of the students of that neighborhood or were they all white or what-have-you, fine. But, I don't know who knows this until it is testified to.

THE COURT: Well, the exhibits reflect that, and the witness is aware of it.

Q. (By Mr. Caldwell, continuing) And we know also in that optional area, Mr. Henrickson, that most of the white youngsters elect to go to Western High School?

MR. BUSHNELL: Objection. The record does not establish that fact in any particular. Maybe Mr. Henrickson can establish it.

Q. (By Mr. Caldwell, continuing) Do you know that, Mr. Henrickson?

A. The record indicates that this year when the option was [3427] eliminated the number of white students at Southwestern was increased by about 300.

MR. BUSHNELL: Excuse me, sir. The year the option was eliminated?

A. The year the option was eliminated.

MR. BUSHNELL: Thank you.

MR. CALDWELL: So, based on that at whatever point Mr. Bushnell interjected, your conclusion is that most of the white youngsters went to Western High School?

MR. BUSHNELL: Objection. That is argument. I apologize for these continuing objections, but I think there is a way to get the answer that counsel wants from Mr. Henrickson without arguing with the witness.

MR. CALDWELL: I was not arguing with him. I was just asking him if that was his conclusion.

A. The record indicates that the students at Wilson Junior High School are predominantly white, and presumably they remain so when they attend senior high school, and the record of the number of enrollments at Western and Southwestern indicate that prior to this year most of them elected to go to Western.

Q. (By Mr. Caldwell, continuing) And this year the elimination of that option affected incoming tenth grade or ninth grade students?

A. Yes.

Q. [3428] Is Southwestern a 9 to 12 high school or a 10 to 12 high school?

A. It receives students from the Boynton area in the ninth grade and from the McMillan area. From the Wilson it receives some in the 10th grade.

Q. The racial data through the decade indicates that the Southwestern optional area has worked about the same in 1960 as it did in 1969 with regard to where the students elected to go to school, does it not, sir?

A. Yes, I believe so.

[3429] Q. That optional area continued for eleven years after you testified you began eliminating optional areas. Can you tell me why that is?

A. I think I have already covered the point but I can repeat it. The matter of the relative size of the two schools, the ability of Southwestern to accommodate the students in the earlier part of the decade if they had been shifted there and then as soon as a construction project was to be undertaken we were faced with a very real practical administrative problem that what is called Southwestern High School has really been two buildings with a very constricted corridor between them which was to be replaced by a much better connection and was replaced by a better connection in the construction period. During the period of construction until that corridor connection was rebuilt it seemed very unwise to take any action which would put in that school any more students than we had to accommodate there.

Q. When did the construction begin at Southwestern?

A. The construction at Southwestern, because it involved both new construction and then alterations, continued over about a three-year period, I think the original authorization was in '65, '64 or '65, along in there.

Q. When did construction of the building begin?

A. About two years after the allocation. I believe it was about [3430] two years in planning so this would be about '67, but I have not checked these dates.

Q. This construction program was not a part of the 1959 bonding program?

A. No.

Q. It didn't add any spaces to Southwestern even after completion of the construction, did it?

A. Yes.

Q. How many?

A. The capacity of the building was increased from around 1900 to around 2,300 or 2,400. I think the 1970 report was in error in not showing a revised capacity there. We replaced the physical education plant but we built a number of shop spaces and so on that increased the capacity.

Q. In 1970 the capacity chart shows that 30 spaces more capacity than in 1969?

A. That was in error. This was not a recomputed capacity. I checked this point after there was some discussion of the Southwestern School at some earlier point and I may have the revised computation with me, if you want the exact figures. Do you want me to look now or look later?

Q. Would you look now, please?

A. (Looking in his file) Here we are. The revised capacity, and this is the capacity that was computed in January, 1971, [3431] is 2,400. The capacity as it was computed in July of '63 before construction, was virtually 1,900.

Q. Throughout the decade all of the construction or all of the capacity charts show that the capacity of Southwestern is 1,900 until this school year which shows it to be 1,930, is that substantially correct?

A. Yes, I believe so.

Q. In your deposition of April 23rd, Mr. Henrickson, at page 36, this question was asked:

"How many added spaces did that add to the Southwestern building? Approximately, if you know?

"Answer: The additional spaces were physical education, shops and dining area, all of which had been very poor. It added some capacity. The capacity was not related or was not really as significant as the upgrading of the program."

Were you in error, sir?

A. No. I indicated that it added some capacity and that the of the building was the significant feature of the construction program.

Q. You wouldn't consider a 500 increase in capacity significant?

A. I indicated that the most significant part of the construction program was the upgrading of the building and the program.

Q. Mr. Henrickson, let me show you Plaintiff's Exhibit 72-B which [3432] is the Inventory of Facility Needs, and ask you if

you would read the sentence or two sentences on page 221 at the bottom of the page?

A. (Reading) "There will be a rapidly increasing youth population within the Southwestern area over the next five years. Assuming there will also be improved retention, enrollment will rise to a level between 2,200 and 2,400. The addition for which funds have been allocated will provide an improvement in specialized facility but not substantial increase in capacity."

Q. Let me turn over to page 231 and ask you to read those two sentences on that page pertaining to Western.

A. (Reading) "The Western area will have some increase in youth population over the next five years. With the improved retention enrollment will rise between a volume of 2,300 and 2,500. Western High School will need some additional capacity but more urgently needed is additional improved specialized facility."

Q. The date in the front of Plaintiff's Exhibit 72-B is revised April, 1969, is that correct?

A. Yes. This is the date, but the revisions to 1969 are the revisions to the site sizes. The other pages were not revised.

Q. So you are telling me those two paragraphs you just read were written in 1966?

[3433] A. Yes.

Q. We are in agreement –

A. I have a list of spaces that were added if this will help clarify the matter.

Q. Perhaps during the lunch break you could furnish us those.

MR. BUSHNELL: Why don't we get it on the record at this precise point since there seems to be some confusion, unless counsel wants to perpetuate the proof.

MR. CALDWELL: It might be during the lunch break I can read it and we can get in one sentence what it may take him two pages to read.

THE COURT: Yes, proceed. This is your examination, you do it your way.

MR. CALDWELL: Thank you, your Honor.

Q. (By Mr. Caldwell) In 1969 we are in agreement that the capacity of Southwestern was 1,900 throughout the decade?

A. Yes.

Q. In 1969 Plaintiff's Exhibit 128-B reflects that the enrollment of Southwestern was 1,483?

A. Yes, sir.

Q. So subtracting that from the capacity of 1,900 there were 400 –

MR. BUSHNELL: – 17.

Q. (By Mr. Caldwell) 417 – thank you, Mr. Bushnell – spaces available at that school, were there not?

[3434] A. My testimony about the administrative differences, about accommodating more students does not relate to the capacity of the school, it relates to the corridor, the connection between the two buildings which all of the students had to use.

Q. And it relates to the quality of the program offering?

A. Yes.

Q. In 1970 the enrollment at Southwestern increased from 1,483 to 1,767, slightly less than 300 – yes, slightly less than 300 pupils. Does that accord with your understanding of the situation?

A. Yes, I believe so.

Q. Would you step over to the large map, please, sir?

MR. BUSHNELL: Exhibit 2,

Q. (By Mr. Caldwell) Exhibit 2, and the overlays Exhibit 137-A, B and C. Will you point to the Southwestern optional area. please, sir?

A. It is this area extending north and south of Vernor, south of the railroad to about the mid-point of the Wilson Junior High service area.

Q. Would you point to Wilson Junior High, please?

A. Wilson Junior High is located at this point near Springwells.

Q. Would you point to the Southwestern High School?

A. Southwestern High School is located on Fort Street at this point.

[3435] Q. Would you say that is a half dozen blocks from Wilson Junior High or further than that?

A. It is more than a half a dozen blocks from the Wilson Junior High and it is considerably a greater distance from the optional area.

Q. Would you point to the Western High School?

A. Western High School is located at this point on Clark Park.

Q. Are you telling me our dot is about three blocks off?

A. No, no, I'm sorry.

Q. Thank you.

(The witness resumed the stand.)

Q. I believe, sir, that you recommended at one time, or suggested, the possibility of pairing the Burton and Franklin Schools which are predominantly white with some of the surrounding schools which are predominantly black, is that correct?

A. If you are referring to suggestions that I made to the Integration Task Force, I think I did point out to the Integration Task Force that these two schools served small white enclaves and that one of the areas that the Task Force might examine was some revision of the service areas to bring about a better racial balance in that area.

[3436] Q. If you can tell from there, sir, I'm pointing to Plaintiffs' Exhibit 2 and the overlays – would you step down here. Maybe it would be easier. I'm sure you can't tell from that area. I'm pointing to the location of Franklin Elementary School that appears to be at the intersection of the Lodge Expressway and the Fisher Expressway or freeway. That school zone contains about 75 percent of the areas as green, representing 5 to 25 percent black, about equal portions white and blue with a little tinge of orange, representing that most of the area is under 50 percent black with the exception of a small tinge of orange.

A. Most of the area is non-residential. The whole south end

of the area and the east end of the area are industrial or central business district and non-residential. But this is true.

Q. The south portion of the area you are talking about is all green – well, some of it is white, white and green.

A. Yes.

Q. And the enrollment at Franklin as demonstrated by the exhibit tag is 17.6 percent black. Is that substantially correct?

A. Yes.

Q. And there are 1,061 youngsters in that school?

A. Yes.

Q. Now, would you point to the Burton, or let me point to it and see if that is it?

[3437] A. Yes.

Q. And that is just about a block to the west of Woodward?

A. Yes.

Q. We have a small portion of Burton zone coming over east of Woodward, do we not?

A. Yes.

Q. Are there families living there?

A. Yes, there are. I testified to this the other day: that that area has been left in the Burton zone in order to keep some black representation in the Burton school.

Q. I apologize for not catching that the other day. Now, what were your recommendations with regard to the possibility of pairing in this area?

A. I don't recall that I made any.

Q. It was just general observations?

A. I don't recall that I made explicit recommendations. The obvious revision of boundaries is possible with the Burton in relation to the Couzens.

Q. Which is 97.5 percent black?

A. Yes. It has a very large black enrollment.

Q. According to the data tag, Couzens has an enrollment of 680 at the present time, and Burton 557.

A. I don't recall that Couzens had dropped to that point, but it has been around a thousand for a number of years.

[3438] Q. The data tag reveals 344 vacancies.

A. Yes.

Q. Now, with regard to the Franklin School, it is also surrounded by predominantly black elementary schools, is it not?

A. There is a higher black percentage in the other schools, yes.

Q. You may return to the stand, please. You may have answered this question? I may have missed it, but at the risk of being repetitive could I ask you again when you made those recommendations or suggestions?

A. I believe they were incorporated in one of the memoranda to the Task Force on Integration in 1967.

Q. What other areas of possible pairings were there that you might have recommended at that time?

MR. BUSHNELL: If the Court please, I don't believe that the term "pairing" has ever been used by Mr. Henrickson. I think this is a term favored by plaintiffs. I also would like to have a time established with respect to this question.

MR. CALDWELL: Did you have an objection?

MR. BUSHNELL: Yes, as to time. What time are you talking about?

Q. (By Mr. Caldwell) This may be the third time we get it, Mr. Henrickson. When were those recommendations made again?

THE COURT: It is the same time, Mr. Bushnell.

[3439] He is talking about the recommendations to the committee.

MR. BUSHNELL: So long as we all understand that then I have no objection.

A. I reviewed a number of situations as illustrations of possibilities, and I indicated, as I say, that within the center city there were a few white areas, predominantly white areas where there was some possibility of improving the racial mix. I did not, as I recall, suggest pairing, what is sometimes referred to as pairing. But, in this case I believe I was talking about boundary changes. I

also suggested that there were a number of changes that should be looked at in the Nolan area in relation to the fact that the Greenfield Park school was an eighth grade school and that the other schools fed directly into Nolan in the seventh grade, and that there might be some possibility for improvement of the racial mix in that area. I don't recall particularly whether I made any more specific suggestions or not in that connection.

Q. What was that recommendation specifically, to eliminate the eight grade level at Greenfield Park?

A. As I say, I don't recall exactly what it was. But, I think that I proposed something of a middle school organization at Greenfield Park, middle or intermediate grades, so that the Courville and the Greenfield Union and Greenfield Park could be mixed. But, I'm not clear on what the recommendation was.

[3440] Q. Did you also suggest some possibilities in the Wilson Junior High area?

A. At some point, and I think perhaps in '67, I suggested the possibility that we might move the entire McMillan program, combine it with the Wilson program so that we could get better integration there.

Q. The Wilson Junior High area is –

A. (Interposing) – is north of Fort Street, and the McMillan is south.

Q. And the McMillan Junior High is located in an area which is about 60 percent green and the rest orange?

A. It consists of the Cary and the Morley district, the Morley having been largely a white area which is now being reduced by the expansion of the sewage treatment plant, and the Cary is predominantly a black area.

Q. Let me read you the data tags from Exhibit 2. Cary is 60 percent black. Morley is 16 percent black. Those are adjacent zones, are they not, within the McMillan feeder pattern?

A. Yes.

Q. McMillan Junior High is 48 percent black, and to the north the Wilson Junior High area is 2 percent black, and the schools and its feeder patterns are approximately 2 percent black also. Would you agree with that?

A. Yes.

***

[3507] MERLE HENRICKSON

resumed the stand as a witness herein and having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION BY MR. LUCAS:

Q. Mr Henrickson, would you refresh my memory for me with respect to your employment in the forties?

A. In the forties I worked for the City of Detroit, first the Civil Service Commission, the Housing Division for a little over a year, and then from that time until 1959 I worked for the City Plan Commission.

Q. Do you remember the year you went with City Plan?

A. I think it was '42 or '43.

Q. Did you work on the 1946 master plan for schools in the City of Detroit?

A. Yes, I did, but my job in relation to that was primarily to edit the material for the final published report.

Q. Plaintiffs' Exhibit 101, the Citizens Advisory Committee on School Needs, Findings and Recommendations, November, 1958, you worked on that study, did you not?

A. Yes.

Q. At page 233 there is a discussion, "School Construction since 1940." It indicates that in the period between 1940 and the date of the report that the Detroit School Board had constructed [3508] new schools and additions sufficient to house approximately 69,000 students. Does that conform with your recollection?

A. Yes, I believe so.

Q. Maybe it will be faster if I show this to you and we will go over it.

(The witness was shown a document.)

A. Yes.

Q. It indicates, does it not, that additional capacity was provided in 36 new elementary schools and in additions to 55 older elementary schools?

A. Yes.

Q. And that during the same period the Board constructed I think it was four new high schools and built additions to three older high schools and one junior high?

A. Yes.

Q. Would you read the footnote that follows the statement, footnote 17.

MR. BUSHNELL: May I ask that the statement to which the footnote is appended be read.

MR. LUCAS: It follows what I just related as to the number of schools. It is a further explanation, counsel.

A. (Reading) "The total list of schools and additions attached shows 175 new buildings or additions. It will be noted the [3509] figure used here in the text accounts for the number of schools which have had additions regardless of the number of additions."

Q. So if you had three additions, they would still be counted as one, is that your understanding of the footnote?

A. Yes.

Q. For the same school?

A. Yes.

Q. So that would be in addition to the 36 new elementary and 55 additions to older elementaries, would that not be true?

A. No, I believe that this 175 –

Q. (Interposing) Would be the gross figure including all of the additions?

A. Including all of those, yes.

THE COURT: Counted separately?

MR. LUCAS: Yes, we count each addition as well as the new.

Q. It indicates that of the new schools built since the development of the master plan, 25 elementaries and two senior high schools were on the sites designated in the master plan for school locations. Was that master plan, Mr. Henrickson, prepared in conjunction with the school authorities?

A. Yes, Dr. Harrington was in charge of construction programs at that time and worked with the City Plan staff in

preparing [3510] a master plan which was adopted both by the Board and by the Common Council.

Q. Also it indicates that the addition to new schools were principally in the outlying parts of the city. As a result of additions made during this period, 29 elementary schools were enlarged to capacity of over 1,000 students. Do you have the copy of the 1946 master plan, school locations?

A. Yes, I do.

Q. Is it a school board record or a personal record of yours, Mr. Henrickson?

A. This particular one that I have is a personal record. I don't know whether there is an official record in the files or not. I have a personal copy.

Q. Do you have any objection to making it available to us?

MR. BUSHNELL: I would, if the Court please.

MR. LUCAS: We could always subpoena it, your Honor.

MR. BUSHNELL: We are now completing our tenth week before your Honor since April 6th. This thing began the latter part of August, 1970. I respectfully submit that there has to be a cutoff to this kind of fishing expedition and discovery and shooting from the hip throughout this trial that plaintiff has been doing. We cannot properly defend.

[3511] THE COURT: What is it you seek?

MR. LUCAS: It is the 1946 master plan, school locations. It covers the period through 1958, your Honor. There has been testimony about how little construction there was and how short the school needs were at the time of the 1958 study. I think the locations of schools is a particularly important matter. I must confess I was not aware of this record. We made inquiries for Planning Commission documents: we made inquiries of the School Board for information as to school locations, and I take it that they made diligent search and did not locate this. The Planning Commission does not have in its files, they advise us, anything earlier than the 1958 study. The only reference I found to it was in this volume during the time Mr. Henrickson was testifying. I'm just attempting to get it at this point.

THE COURT: You say that the 1946 master plan was operative until 1958?

MR. LUCAS: Yes. That is my understanding of it from reading these documents and from Mr. Henrickson's own testimony.

THE COURT: Is that the case, Mr. Henrickson, as far as you know?

A. Yes, substantially. There were modifications since the plan itself was a generalized plan, and to some extent the plan in [3512] its general objectives has continued to be operative since that time with further modifications.

MR. BUSHNELL: Well then again Plaintiff knows what the situation has been since '59, and in the light of Mr. Henrickson's statement, this would add nothing to it. But, more to the point, if the Court please, I have tried to extend every courtesy in the conduct of this litigation to plaintiffs' counsel. We have made our staff available at their convenience. We have made all of our records, the entire school system available to them at their convenience and at our great inconvenience. We have permitted Mr. Lucas to conduct an examination that was started by his associate on and on and on. But we have got to draw the line someplace, and the line I draw, respectfully, is the continuation of discovery through this litigation and particularly discovery by plaintiffs when our case is being put in.

THE COURT: Well, I think under the rules Mr. Lucas is entitled to it. He may have it. But I am concerned about extending the trial, and I don't know what use you propose to make of this. It may well be that I may take a different position as far as the use of it is concerned. But, I think it should be made available to them.

MR. LUCAS: It may be nothing but a rebuttal exhibit, your Honor.

[3513] THE COURT: All right.

From your last remark, Mr. Henrickson, I take it that what the case is simply this: that the 1946 master plan was generalized in terms, is that correct?

A. That's correct.

THE COURT: And that in its essentials it has been operative ever since then?

A. Yes.

THE COURT: Because it has been modified from time to time in specifics?

A. Yes.

THE COURT: I see. All right.

Q. (By Mr. Lucas, continuing) The 1946 master plan did designate particular sites, did it not?

A. No, it did not. It designated generalized locations for elementary schools, for example at the mid-point of residential areas bounded by major thoroughfares, and this mid-point of an area bounded by major thoroughfares was only designated by a circle on a map. It was not the specifics of a street or this block or that block.

[3514] Q. So, when the study here says that the 25 elementaries and two senior high schools were on sites designated in the Mater Plan for school locations, you mean it is within the perimeters of that circle? Is that what you understand this to mean?

A. Yes, within the general area indicated by that circle.

Q. Did that Master Plan also take cognizance of any sites that were already owned by the Board?

A. Yes. This included a number of sites which the Board had acquired at that time.

Q. So, a number of them would be specific sites, would they not?

A. Some would be, yes.

Q. Now, the first paragraph indicates that the construction of new schools and additions provided 69,000 student spaces, and it says that figure corresponds closely to the increased enrollment since that day, and I take it that date is referring to 1940. Is that your recollection?

A. Yes.

Q. The study goes on to describe a working relationship between the Department of Parks and Recreation of the City of Detroit and the Board of Education. It indicates that this joint program was implemented by a series of financial arrangements between the two agencies intended to be a proper allocation of costs. Is this same procedure going forward today?

A. Yes, basically it is.

[3515] Q. In selection of sites, Mr. Henrickson, isn't the procedure basically that you and your office make a determination of a site in conjunction with whatever is on the Master Plan as it presently exists, and if there are any deviations from that existing Master Plan, you consult with city planning and obtain their views on that deviation?

A. Well, I think I should make clear initially that where they were talking about the period before decentralization there –

Q. Let's talk about before.

A. There are some changes in procedures in process now. The procedure that we followed over the decade was initiated essentially by Doctor Brownell in the spring of 1959 in which he transmitted to the Plan Commission a list of schools which were in the '59 priority list and asked that a series of joint conferences be set up and studies be set up between the two staffs to begin to determine the sites, and this procedure of joint staff conferences, usually between the three departments and sometimes with other agencies of the city, has continued over the decade. Now, in most cases an initial proposal has come from my office, and this has been reviewed for any problems that it might raise with the Department of Streets and Traffic and street closings or any of the agencies that might be affected by it.

[3516] Q. Is that for any program or for particularly schools which do not fit the existing master plan of the City of Detroit?

A. This has been a procedure for all school sites.

Q. Generally speaking, there have been situations where the Park Commission purchased acreage or already had ownership of acreage and the School Board would then in turn acquire part of the site for it. Conversely, the School Board would have a site and

the Park Commission would acquire acreage prior to the site being used?

A. Yes.

Q. There has been an expansion of that in connection with recent federal programs, has there not, the Open Spaces Program?

A. Well, the Open Spaces applications have been processed in part through the city, but we have not had joint Open Space applications with the Department of Parks and Recreation. We have had our own applications.

Q. But your Open Spaces has been to add open land adjacent to existing sites to expand them, is that correct?

A. Yes.

Q. On occasion this has enabled you to utilize part of the original site for new construction because of the additional area available to you?

A. Yes.

[3517] Q. How does the relationship between your office and the Urban Renewal and other agencies, how does this contribute to the so-called local contribution to local programs such as Urban Renewal?

A. There has been much more conversation about that contribution than there has been actual use by the Housing Division of school construction moneys. The provisions of the housing law is that the Housing Commission must make a one-third contribution to the total cost of an urban renewal project and that that one-third contribution may be in kind, including school construction, so that in some few projects, but not nearly as many as has been discussed, the Board has simply furnished the Housing Commission with some certification of the expenditures it has made so that it can in turn certify that as a local contribution towards the one-third contribution toward the cost.

Q. Have there been any similar relationships with respect to the Model Cities Program?

A. The Model Cities Program has had much less formal kinds of procedures. We have in the first contract here with Model

Cities, there was a contract for class size reduction to a class size of 22 within the Model Neighborhood area and the amount of the contract contribution to the Board included some funds for additional classrooms.

[3518] Q. Do you know how much that amounted to in the last couple years?

A. Well, there has been only one contract year and the total amount of that contribution, as I recall, was $1,200,000.

Q. Mr. Henrickson, have you had an opportunity to examine the exhibit marked as Plaintiffs' proposed Exhibit 153-A which is entitled "1960-64 New School Construction?"

A. Yes.

Q. 153-A, and have you also examined Exhibit 153-B, sir?

A. Yes, I have.

Q. The period 1965 to '70, is that correct?

A. Yes.

Q. You understand that to be a division of the information appearing on Plaintiffs' Exhibit which is in evidence, 153, which is the period 1960 to 1970?

A. Yes.

MR. LUCAS: Your Honor, at this time I would like to offer Plaintiffs' Exhibit 153-A and B which are a division of the earlier exhibit.

MR. RITCHIE: I have no objection, your Honor.

MR. BUSHNELL: I'm sorry, I hadn't looked at these before. I thought they were in evidence the way they were spread out here.

MR. LUCAS: They have been available for [3519] three or four days.

MR. BUSHNELL: Well, of course, they have been available, but there is a stack of stuff there but I don't paw through his material.

MR. LUCAS: Your Honor, they have been directed to his

associates and they have been asked to examine them and Mr. Henrickson has seen them.

MR. BUSHNELL: I am now taking a look, Mr. Lucas.

MR. LUCAS: I'm sorry you are using the Court's time, Mr. Bushnell.

THE COURT: I thought the temperature in here was fairly comfortable this morning.

MR. BUSHNELL: It's hotting up, your Honor.

There is no objection.

THE COURT: The two exhibits may be received.

MR. BUSHNELL: Might I ask for my own information the legend on here shows black, red and yellow, the yellow being "Other." What is "Other"?

MR. LUCAS: In between the figures 80 to 100 percent black or 80 to 100 percent white, just as it was in the original legend.

[3520] MR. BUSHNELL: That means less than 80 to 100 percent black or white, is that what you mean?

MR. LUCAS: That is correct.

MR. BUSHNELL: Thank you.

MR. LUCAS: This is the date the construction was opened.

Q. Would you step to the exhibit, please, Mr. Henrickson. I have 153-A over Plaintiffs' Exhibit 136-B, which is the 1960 census data imposed on the official map of the Detroit Public Schools. Would you examine the exhibit and tell me, sir, whether or not any of the black squares indicating schools 80 to 100 percent black appear outside of areas that are either green, orange, blue or red in the period 1960 to 1964?

MR. BUSHENLL: If the Court please, this is repetitive. We went through it on direct examination and it has been gone through many times before. I will stipulate to all of this.

MR. LUCAS: I think we ought to articulate the stipulation. Will counsel stipulate black schools were built in areas of black racial concentration and none of them were built in areas that are 0 to 4.9 percent white?

MR. LUCAS: I will stipulate to the fact schools that are predominantly black appear in predominantly black areas on the census tract. And I will stipulate schools [3521] that are predominantly white appear in predominantly white areas on the basic census map.

Mr. LUCAS: I have no other questions relative to the exhibit. I might state to the Court, the purpose of the exhibit was that certain school locations were shown among defendants' exhibits over the 1970 overlay and I am breaking these down in an attempt to show the pattern as the population pattern changed.

Counsel, in examining the exhibit will you make the same stipulation with respect to 1965-70?

MR. BUSHNELL: With the exception of the Murray, the Winship, Beaubien, Kettering, Myrtel –

MR. LUCAS: The stipulation originally was with respect to the black squares.

MR. BUSHNELL: All of which appear in predominantly black parts of the 1970 census information. The same stipulation. The Earhart I just don't know what you have done with the Earhart. The basic data shows that the Earhart is in an area or sits astride an area that is five to 25 percent black and 0 to 5 percent black or "other."

MR. LUCAS: I will accept the stipulation and there is no need to go over it further.

Q. (By Mr. Lucas, continuing) There was testimony in the hearing and I don't know whether that was one of the few times you [3522] were not here, Mr. Henrickson, with respect to the fact that the State of Michigan had authority with respect to school site selection and approval up until 1962 when it was withdrawn in part by the Legislature. Were you here at that time when that testimony was taken?

A. Apparently not. I don't recall it.

Q. What relationship did you have with respect to school location and approval of sites and so forth with State Department of Education through 1962?

A. There was no procedure of referral or clearance of any sites with the State Department at any time.

Q. So you made no effort to clear it with them or did you adopt a procedure of your own? You are saying there was no procedure which you followed or that there was none recorded to be followed?

A. There was no procedure that was ever called to my attention in any way and no suggestion that there was any such requirement.

Q. There was no effort as far as you know and you would be the person most directly affected by such advice or disapprovals by the State on the part of the State to require the Detroit Board to meet any particular standard or any criteria, is that correct?

A. Yes.

Q. Just to clear up one minor matter, this little white spot on [3523] this big map, the large white spot that appears on the map in the census data, that area is called CBD shown without racial composition, the so-called Central Business District.

A. It would be shown without racial composition if it had no residents. However, it would normally have hotel residents and rooming house residents so that normally there would be some population to be counted and it would be shown.

Q. It is shown in all of the Detroit census as white or black or shown as just not having any population?

MR. BUSHNELL: The area to which counsel referred is bounded on the south by the River, on the east by Woodward Avenue, and on the north by Michigan Avenue and on the west by the Edsel Ford Expressway. We are in the heart of it this instant.

A. I have not had any occasion to check the census data to know what is in the census about this particular tract. As I say it does contain some hotel population, some downtown apartment residences, to my knowledge, but I don't know what the census reports on it.

[3524] Q. Would you step to the big map, sir? There were some exhibits introduced purporting to show the coverage of pupil population with the colors – I think there were defendant's exhibits showing that green or blue appeared in almost all sections of the city with the exception of a few particular areas which would have been reached by the April 7th Plan but for the action

of the legislature. Do you recall those exhibits?

A. Yes.

Q. I haven't put them up because of the height limitation. Would you step over here, sir, to the Redford zone and tell me how many black students you had with desegregated experience at the Houghten School in 1970?

A. The Houghten School is 1.1 per cent except they feed into Murphy and would have a –

Q. I'm talking about the Houghten School, Mr. Henrickson.

A. All right, 1.1 per cent.

Q. Out of 919 students?

A. That's correct.

Q. And the Lodge is 7 per cent, is that correct?

A. Yes. There were some students transported to the Lodge.

Q. Larned is 7.4 per cent?

A. Yes.

Q. Burgess is .3 per cent?

A. Yes.

[3525] Q. What about the Murphy? It shows 9.8 per cent. How do students get into Murphy physically?

A. There is a very convenient transportation, public transportation along Fenkell Avenue.

Q. Because of its transportation don't almost all students get there by the bus transportation?

A. Because of its location most of the students in the service area have a relatively inconvenient walk from the north or south where there is no transportation lines.

Q. I'm saying therefore they get in by some sort of transportation. Do you disagree with that?

A. I said they have a rather inconvenient walk, and most of them walk or use bicycles.

Q. Why was the school located on the extreme edge of the city?

A. Because it was to serve five schools in that area, the Hubert, the Healy, the Houghten, the Lodge and the Yost.

Q. It is about as far away –

A. That was the service area in the plan.

Q. There are actually some students who live just across the city limits who are practically across the street from the Murphy, are they not?

A. No. That doesn't happen to be a residential area right there on the other side.

Q. The park, that is not residential, either, is it? That is not [3526] a residential area there that abuts right to it, is it?

A. Yes, it is within the park for the advantages of being within a large open space.

Q. All right. The Gompers School, can you tell me how many black or white children get a desegregated experience there?

A. The number on the chart is 19.

Q. No, that is the capacity figure, per cent black.

A. Oh, per cent black is zero.

Q. And that's true generally in most of the schools in the western part of the city, is that correct?

A. True. Most of the schools in the western part of the city are where there are no resident Negro children, and they attend there only by virtue of some policy of the Board which gets them there either by transportation or –

Q. What about Edison which is adjacent to the black population area? It was 2.7 per cent black, does it not?

MR. BUSHNELL: Well, let's determine what right adjacent means, cheek by jowl or a mile away?

MR. LUCAS: Would you prefer contiguous in the language of the Supreme Court?

MR. BUSHNELL: I would prefer that the witness testify rather than counsel, even though I must confess that I have been doing that myself from time to time.

Q. (By Mr. Lucas) The Edison is immediately contiguous to the [3527] Burns Elementary zone, is it not?

MR. BUSHNELL: Objection. Could Mr. Henrickson tell us what that is?

MR. LUCAS: Your Honor, this is cross examination. If counsel wants to waste any more time stringing out the case as he has accused me of doing –

MR. BUSHNELL: Now, for the record we lolligagged along for seven weeks while plaintiffs just dripped in their case. We have had less than two weeks to present our business. Every effort is being made to wind this up within three or four weeks, and I take real exception to this kind of comment by plaintiff's counsel.

THE COURT: Well, let's proceed with the examination.

MR. BUSHNELL: My objection is that counsel is testifying.

THE COURT: Well, he may ask him whether those two schools are located contiguous to each other.

A. They certainly are. This is one of the pairs that Doctor Foster spoke to which I spoke to earlier this week.

Q. (By Mr. Lucas) And Burns is 59 per cent black and Edison is 2.7 per cent black?

A. Yes, with families moving in now.

Q. And Dossin is just below that, and it is contiguous to another [3527–A] area in the green, 39 per cent black at Cadillac, and Dossin is 5 per cent black, is that correct?

A. Yes, Dossin has had students transported into it during most of the decade.

[3528] Q. What is Coolidge? Why is it so much larger than the other elementary schools?

A. Well, because this was the policy of the Board at the period that Coolidge was built. They built very large schools at that time.

Q. Are Dossin and Coolidge almost in a straight line on the map?

A. Yes. Of course Coolidge has a rather larger natural service area than Dossin. Dossin is in a rather limited area where the normal school district is from Schoolcraft to the railroad, which is half the size of the area of Coolidge.

Q. So, you have Edison and Dossin together totaling about

the pupil population of Coolidge, is that correct?

A. Yes.

Q. And Coolidge is 1,181 students, and it is 2.1 percent black, is that correct?

A. Yes.

Q. What about the junior high schools? Emerson is shown on here as 3.6 percent black. That is in the western area also, is that correct?

A. Yes.

Q. And Cooke is 0 percent black, and that is almost in a straight north–south line with the Emerson School?

A. Yes. Cooke is one of those schools which is in the area which showed no black experience at any level.

[3529] Q. What about Burt? Is that in the same area?

A. It is.

Q. It is 1,012, and 0 percent black. And Lessenger was in that same area?

A. No. Lessenger has black students at the present time as a result of transportation from the Hally.

Q. And 1,040, and its integration is 8.3 percent, is that correct?

A. Yes.

Q. The same general thing would be true, without belaboring the point, in the northeasterly section, the Osborn, Denby, Finney area, the same type of examples we used with generally the same pattern, is that correct?

A. Yes.

Q. Thank you, sir. As I understand the exhibit, it purports to show that although the elementary schools may have few or very small percentage of black students in them, and in some cases none, there are a number of the junior highs which have at least five to 10, sometimes as much as 20 percent black students in them, is that correct?

A. No, that is not an accurate interpretation of the exhibit which we showed. We showed that at all levels, elementary, junior

and senior high school, there were within the white residential areas some schools which have black students beyond the numbers and percentages in which they are represented in the population.

[3530] This is true of elementary schools, junior high schools and senior high schools.

Q. In other words, the white students out there are getting a desegregated education, in your opinion?

A. They are having an integrated experience at some level in most of the areas of northeast and northwest Detroit.

Q. Do you consider 5 percent out of 100 in a white school to be a desegregated school?

MR. BUSHNELL: If the Court please, I will object to that as being argumentative. The answer was an integrated experience.

MR. LUCAS: I asked him a separate question, counsel.

MR. BUSHNELL: O.K. Then I withdraw my objection. However, my lawyers point out that this calls for a legal conclusion as a further objection.

THE COURT: I think not. It calls for an educational conclusion which the witness is qualified to answer.

A. As I have indicated, I think this provides the white students with an integrated experience which is important to them. I do not profess that this constitutes total desegregation.

Q. (By Mr. Lucas) Does it constitute a desegregated school in the example I gave you?

[3531] A. I think for the experience of the white children in that school it certainly does.

Q. What about for the black child?

A. I think for him it is also an important integrating experience, and that it is certainly desegregation in relation to any other experience he would have in the inner city.

Q. In terms of his own viewpoint is that school a desegregated school? Would you make any difference between the white child in that situation or the black child?

A. I think regarding the social importance of the experience of the white and black child, it is more important that the white child have the experience than the black child have the experience.

Q. Why is that, Mr. Henrickson?

A. To the extent that the patterns, practices, attitudes of segregation in our society are problems of the white society, are endemic to the white society. It is most important to the white child that he have the experience of fellow students and teachers and others in the community who are black, and this experience can be a constructive experience. I think this is the most important thing that we can do in the City of Detroit at this time.

Q. In terms of your obvious familiarity with desegregation, Mr. Henrickson, is it generally considered that this type of [3532] experience, whether white or black, that it is most important that it come at the elementary level, that it be initiated at the elementary level?

A. It is most advantageous if it can start early, yes.

Q. In the forming of attitudes and development?

A. Yes.

Q. Does it create additional tensions and additional difficulties when children come from racially separate elementary schools into an integrated situation for the first time at the junior or senior high school level? Does that magnify the problem?

A. I think it certainly has been the experience in Detroit that the problems have been greater at the upper secondary levels where their first experience has been at that age level.

Q. Mr. Henrickson, what about the desegregated experience where 74 percent of all black students in Detroit attend schools in 1970 that are 90 percent or more black? I think you referred to it as the central city, or whatever. What about their integrated experiences?

A. Well, we don't have enough white kids to go around unless we sit them three abreast with a white kid in the middle.

Q. How much do you consider enough to go around, Mr. Henrickson?

A. Enough to go around in this case would be three abreast with a white kid in the middle, and this is not a proportion that can give a useful constructive experience to white or black [3533] kids at this time. I'm afraid I have come regretfully to this conclusion in the last three years.

Q. So, you are saying it is a good experience, a beneficial experience if you have five, 10, 20 percent black in the white schools and plus, is that correct? It is advantageous?

A. I don't want to suggest that there is a numerical formula.

Q. Not necessarily. I'm asking you based on what it is now. You say you think that is an advantage that the white children have this experience?

A. Yes, and I think it was a very helpful constructful experience for my daughter to attend Miller Junior High when she was virtually the only, if not the only, white child there. But that was about four years ago. I'm not optimistic at this point that she could have the same constructive experience there today that she had four years ago, or that other white children can.

Q. What if there were not the separation apparent on the face of this exhibit in terms of school population? What if you assigned 25, 30, 35 percent white to some school that is presently 100 percent black? Do not the black children learn by avoiding the problems of the isolation producing a racist attitude by being required to be in that type of integrated environment?

A. Could you restate the question?

[3534] As I understand what you said, you thought it was good, of benefit, it was needed tohave black association with white children in the west and northeast, since that is the area we are dealing with right now, that it was advantageous to them, and it was necessary, and I'm asking you now would it not be advantageous in terms of isolation to put 30 percent, 40 percent white in black schools, all of them? I'm not talking about one or two of isolated instances. I'm talking about all of them in terms of requiring both black and white students, the black in a predominantly black area and the whites in a predominantly white area, to be required to learn and live and adjust and understand each other?

A. I'm not opposing at this point that that could or would be a constructive experience.

[3535] Q. I take it you are not an advocate of white separatism?

MR. RITCHIE: Could I hear that question?

MR. LUCAS: I take it he is not an advocate of white separatism.

A. No, I am not.

Q. (By Mr. Lucas) You are equally not an advocate of black separatism?

A. That is correct.

Q. I think you have pointed out, didn't you, Mr. Henrickson, that the April 7th Plan did not touch the blacks in the central city?

A. That is correct.

THE COURT: What was that question?

MR. LUCAS: The April 7th Plan did not touch the blacks in the central city.

THE COURT: All right.

MR. LUCAS: I have no other questions of Mr. Henrickson.

THE COURT: Mr. Ritchie?

MR. RITCHIE: Yes, I was going to ask the Court and Mr. Bushnell I understand –

MR. LUCAS: Excuse me just a moment. Can I bring up one other matter Mr. Caldwell asked me to bring up since we weren't furnished with this information by Mr. [3536] Henrickson about Western? If I could I would like to give my statement on that.

THE COURT: Is this a matter Mr. Caldwell can cover?

MR. LUCAS: All right, we will wait for him. I didn't want to get so far removed that we forgot it.

THE COURT: Mr. Ritchie.

MR. RITCHIE: May I make the suggestion to the Court: I understand Mr. Henrickson is going to be made available to Mr. Caldwell who will complete the plaintiff's cross examination and if the Court please I would defer any cross examination I would make of this witness until the plaintiff has completed his cross examination. Mr. Caldwell may go into things I may go into, but since he is not here I think we may have some comity by following that procedure.

MR. BUSHNELL: I was about to ask for the same privilege because my redirect of Mr. Henrickson, if any, right now, focuses on Mr. Caldwell's examination.

THE COURT: Both suggestions are well put.

I keep going back, Mr. Henrickson, while I think of it again to what has bothered me before and your either reluctance or inability to answer. Looking at all of the exhibits we have had and having in mind the material which has gone into this case, one of the questions that I haven't [3537] asked some of the other witnesses and perhaps I should have, but you put your finger on it again and that is why I keep coming back to it. Don't you have a projection of what you expect the racial composition of the school population in the City of Detroit to be in 1975, 1980?

A. In response to your previous question, I am preparing some material, including a map which I expect to have ready for next Wednesday.

THE COURT: Fine. Perhaps you can understand my concern.

A. Yes.

THE COURT: In other words, if the projection, and I will be surprised if it doesn't follow the course which history has shown since 1940, if the projection is in that direction then this occurs to me, how do you integrate a school district where the student population is, let's make a guess, 85 to 95 per cent black? How do you integrate it?

A. This is our problem.

THE COURT: That is the same problem you spoke to, was it not?

A. Yes.

THE COURT: I think the way you put it was there aren't enough white students to go around.

A. Yes.

[3538] THE COURT: And there will be less in the future, I expect?

A. That 's right.

THE COURT: I don't expect you to give us a solution on that, but it bothers me.

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HAROLD R. BROWN

called as a witness on behalf of the Defendant Board of Education, being first duly sworn was examined and testified as follows:

THE COURT: Your full name, sir?

THE WITNESS: Harold R. Brown.

DIRECT EXAMINATION BY MR. BUSHNELL:

Q. Mr. Brown, by whom are you employed, sir?

A. The Detroit Board of Education.

Q. In what capacity?

A. Secretary to the Board and its business manager.

Q. How long have you held that office, sir?

[3539] A. Approximately four years, since July 1, 1967.

Q. Prior to that time what did you do?

A. I was in the State Department of Education which was then the Department of Public Instructions in the capacity more or less of the finance director.

Q. How long did you serve with the State Department of Education?

A. In various capacities for about 33 years.

Q. You retired from the State Department?

A. I retired from the State in 1967.

Q. And came with the Detroit Board?

A. Correct.

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[3545]

Q. Mr. Brown, one other question, sir. There has been a good deal of discussion in the course of this trial about bonding authority and use made of the funds that are derived from that authority. I would like to ask you several questions, sir, [3546] about that and see if we can't get it all in order. Has the district –

and I ask you this question on the basis of your experience with the State Board of Education as well as being secretary and business manager of the Detroit district – has the Detroit Board of Education always had bonding authority so that bonds could be issued without vote of the poeple?

A. Has it always had?

Q. Yes, sir, if you know.

A. I do not know always. It has for many years.

Q. What was the level of that bonding authority?

A. It went from 2 percent –

Q. I am talking about originally from the time you first knew about it. It was a 2 percent –

A. 2 percent of equalized valuation that could be levied by the Board, then it was changed.

Q. All right. Now, in order to get more than 2 percent of the equalized valuation of the property within a district what did the Board have to do?

A. The Board of Education had to take the matter to the taxpaying electors of the city to get approval to bond the district beyond that capacity.

Q. Who is eligible to vote in those bonding elections at that time?

A. At that time the taxpaying electors of the district.

[3547]Q. You mean by that the property owners?

A. Yes.

THE COURT: Real estate property owners?

A. Yes.

Q. You indicate that that 2 percent authority was increased. When and how much?

A. I m sorry, I can't tell you the exact year. It was increased by I percent. It went from 2 to 3, but I can't quote the year.

Q. How did that authority of 3 percent compare to the authority granted all other districts in the state?

A. It was less by 2 percent. In other words, all other districts in the state had the authority to bond up to 5 percent of the state equalized valuation while Detroit was limited to 3.

THE COURT: This is true at a time when Detroit only had a 2 percent authority?

A. This is correct.

Q. Now, sir, when was the authority increased from 3 percent?

A. During the last session of the Legislature; not the current one but the one immediately preceding so that for this year we have the 5 percent authority that the other districts now have.

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[3549]

A. They have authority to this extent, their purpose under the various statutes is simply this, to receive the budget of the various units involved in tax levying within a county and if the request of those units cannot be satisfied within a statutory limitation of 15 mills then they have to examine each one and determine how much of the millage each of the units gets on the basis of the budget presented.

Q. How much of the millage did you get last year?

A. 8.26 mills.

Q. Is that about the average that you receive?

[3550] A. Yes, for many years that is about the same figure we have received for many years, the exact figure.

Q. So it is sort of a pro forma thing unless you happen to present a very low budget?

A. That would be true, yes.

Q. What about the Municipal Finance Authority in Lansing, that is a state agency?

A. That is, yes.

Q. Just what is their role, what kind of approval do you have to get from them?

A. Nothing at all in terms of our operating millage.

Q. Bonding?

A. Only in our bonding authorities where we have to get the approval of that body before we can actually bond.

Q. Do they approve what you are going to do with the money or just approve your financial status?

A. Generally they approve what we intend to do with the money so it fits the various statute regulating the use of bond money.

Q. How much more money do you get as a result of the increase between 3 and 5?

A. That will vary, obviously, as our vaulation varies, but currently on the basis of our present figures something over $100 million, our valuation is 5 billion 7.2 per cent of that is $114 million. That will be the new figure.

[3551] MR. LUCAS: Thank you.

MR. BUSHNELL: Do you have any questions, Mr. Ritchie?

MR. RITCHIE: Just a few.

MR. BUSHNELL: Do you mind if I proceed at this point just briefly and then I will turn it back to you?

MR. RITCHIE: Not at all.

REDIRECT EXAMINATION BY MR. BUSHNELL:

Q. Proceeds from bond sales can be used for what purpose?

A. Only for construction of buildings, site acquisitions and in some cases some major remodeling and alterations.

Q. Can they be used for operations, temporary salary, administrative salaries, books, that kind of thing?

A. In no way, no, sir.

Q. Has the valuation of the district varied from year to year?

A. Yes, tremendously. In fact, we have I believe less valuation at this moment than we had several years ago. I could not quote the exact year but it has fluctuated up and down. It

reached a low point of some billion dollars or so less than it is right now.

Q. Billion?

A. Yes, 4 billion 6 I believe, if my memory isn't faulty fifteen[3552] years ago and it has now crept up to 5 billion 7, so the district through this loss in valuation has suffered tremendously both in its operating funds and in its building program.

Q. When you say the valuation has crept back up from this billion dollar discrepancy of some fifteen years ago, you don't mean to say this has been a steady increase?

A. Yes, it has been more or less steady.

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[3840] MERLE HENRICKSON

thereupon resumed the stand as a witness on behalf of Defendants and, having been previously duly sworn, testified further as follows:

CROSS-EXAMINATION (Continued) BY MR. CALDWELL:

Q. Mr. Henrickson, let's talk a minute about the capacity charts in Plaintiffs' Exhibit 80. Let me give you the 1969 folder out of that.

That doesn't look like a good one - let me give you the 1970 folder. In that folder there are two charts. As I understand it, one of them is a pre-enrollment chart in which you predict what your capacity or under and over capacity will be and another one is computed after the enrollment to see what it actually was?

[3841] A. Are you speaking of the difference between these two sets?

Q. Between the two sets?

A. Yes.

Q. Yes.

A. No, that is not the difference.

Q. O.K.

A. Each one of these is a pre-enrollment projection , one for the February semester and one for the September semester.

Q. So they are both done -

A. (Interposing) They are both done during the prior semester and the enrollment estimates are the estimates, the projected enrollments are the estimates of the principals which we refer to as after enrollment.

Q. Does the one that is done to project what the enrollment would be as of February, does that also include what the enrollment was as of September?

A. Yes.

Q. So that in a sense it does; you can take the two charts and see what you projected for September and then you can look at the February projection and see if your projections were accurate for September?

A. That is correct.

Q. When do you make the projection chart for September? When do you prepare that data? [3842]

A. When the reports come in from the schools the principal makes a monthly membership report and after the first month usually about the same time as the second monthly membership report comes in a principal prepares an after-promotion - what we call an after-promotion report which is the projection for the coming semester, which really represents three kinds of assumptions: one, all of the students are promoted at a grade; two, the principal may or may not have some estimate from the local parochial school what transfers back and forth are anticipated and, three, the principal may or may not at that time anticipate a change in organization or change in boundaries which would affect the enrollment.

[3843] Q. Now, what is the date on which you make that projection, or the month? Do you do it after the end of the previous school year or previous semester? For example, for the September progression do you do it in June or July or August, or do you do it earlier?

A. We do this during the semester. For example, I have just now gotten from my secretary her completed tabulation of the ones for this semester, and then she reported to me yesterday that

there were some more after-promotion reports coming in, and she was now making the corrections for this coming semester.

Q. So from those you will now compute onto a chart like –

A. (Interposing) Yes.

Q. (Continuing) – the one we just looked at?

A. Yes.

Q. The projection for this coming September?

A. That's right.

Q. So, is it usually about this time of year that you are in the final stages of that process?

A. Well, usually we have it completed a month earlier than this, but this year we have had additional organizational problems.

Q. So last year for example you had it done in May, didn't you?

A. Yes.

Q. Let me ask you about the Burton Elementary School and on the large map, Plaintiffs' Exhibit 2 (indicating), and the overlays, [3844] we talked Friday – or Thursday, rather – about a small section of the Burton zone which goes across Woodward, I believe, and picks up some black kids there to place them in the Burton School.

A. Yes.

Q. Do you recall that? Now, according to the overlay, the high school, Northeastern High School boundary actually splits the Burton Elementary School as does the – the Spain Junior High boundary. Now, do part of those kids that go to Burton from the east side of Woodward, do those kids end up going to Spain and then to Northeastern?

A. Yes. This is one of the few remaining cases throughout the city where this kind of situation occurs. But this is a case where we did change the secondary boundaries early in the decade, and we left the Burton boundary intact, splitting the children at the end of the elementary.

Q. This is virtually the same boundary you had in 1960?

A. Yes. It's changed only as the result of–

Q. (Interposing) Closing Irving?

A. Closing Irving, and a considerable amount of clearance as a result on the east side of Woodward which resulted in our changing our mapping, but not really affecting any – any students.

Q. Just to make my understanding clear, those youngsters that live[3845] in that segment of the Burton zone on the east side of Woodward go to Burton Elementary School, but then they do not continue to the same junior and senior high school?

A. That's correct.

Q. With those youngsters. Each year do you publish the boundary guidebooks? When do you prepare your boundaries for the forthcoming year?

A. As soon as the – as soon as the boundary changes are completed we – well, we try to have the boundary change forms all completed and signed and announced within the school about a month before the closing of the spring semester. I –– I say try, because it frequently happens that there are a few that remain unresolved until the end of the school year. But as they are completed we then take the maps and make the mapping revisions and try to have a revised map or revised boundary guidebook available in each of the schools for fall. But sometimes we have achieved that, and sometimes not.

Q. You sometimes have to make changes during the summer, do you?

A. Yes.

Q. In terms of these changes when then is the final proposition, the final publication date if we could, of the boundary guidebook for the forthcoming year?

A. This is not a fixed date. It's a production target of the first of August.

[3846] Q. Did you meet that target, let's say, last year?

A. No. I think not. As I recall we did not, but we didn't get it to the printer until after the opening of school last year.

Q. So, the boundary guidebook was published sometime in the first of September, then, you think?

A. Yes.

Q. Perhaps without even showing you this I can ask you: does the Southwestern optional area appear in the 1970 boundary guidebook (indicating) which is Plaintiffs' Exhibit 78-L? In other words, is that option described?

A. As I recall it, the – the boundary guide does not indicate that it was terminated, but it appears in the same form it had in previous years.

Q. So in other words the boundary guidebook says that there's an optional – that the kids living in this area here (indicating) that has continued throughout the decade, will have the option of going to Southwestern and Western?

A. That is indicated in the boundary guidebook, yes.

Q. And this was published sometime in the first week of September?

A. Yes.

Q. That would indicate that at least from that – from that set of circumstances, that the optional area was eliminated sometime after you published the boundary guidebook?

A. No. the optional area was – notice of the termination of that [3847] option was given to the school in spring, and the students were notified in the spring that they were going to Southwestern during the course of the summer. And the legislative action – there was a great deal of confusion about the status of these, and the confusion was reflected in the publication of boundary guide. But it was not – did not affect where the students went. They went to Southwestern.

Q. Last Thursday, during your cross-examination, you produced a list of the construction additions at the Southwestern High School. And, sir, perhaps it would be quick if I just gave what the list shows, and then I will give it to you and ask if I had stated it correctly. It shows one drafting classroom, two drafting classrooms, rather; one electronic classroom; two auxiliary gyms; one power sources classroom; two material processors' rooms; one vocal room; one instrumental room; one foods room; one gym, double; and one pool, double. Does that (indicating)?

A. Yes. That's correct.

[3848] Q. Most of those room additions are additions of bases which are not, shall we say, the basic educational offerings of a high school? In other words, those were special or they are supplementary type programs? At any rate, it's not reading, writing and arithmetic, government and that sort?

A. About 50 per cent of the instructional stations in a high school currently are classrooms in the traditional sense, and about 50 per cent of the instructional spaces are specialized laboratories, specialized places for specialized instruction. I would not accept the classification of either of those as being basic or not basic.

Q. When do youngsters register for school? Or first let me ask you: How do you assign pupils to schools for the forthcoming school year?

A. The high school students or students who are graduating from a junior high school, are visited at their junior high school by the counselor during the previous semester and are given an opportunity to indicate course preferences where they are electives and that sort of thing. And then their records are forwarded to the high school during that semester before the close of the semester so that the program for fall can be made up at the end of the term so the programs are ready for the students to start in September.

Q. When do you have a good, a pretty good definite idea of how [3849] many kids are going to be at what school; high school, elementary and junior high school levels?

A. Well, –

Q. By mid summer?

A. The work or preparing for fall is done before the close of school in spring. There's not normally a staff on hand in the building for the purpose of working on fall programs during the summer so that the counselors work in scheduling the students. The department heads work in making up class schedules has to be completed during the last month of school, and it is normally handled in that way.

Now, there are additional students received at the opening of school. There are always some enrollments that come in special for them as over-the-counter enrollments. And these have to be fitted

into the program. And if there's such a large number of them, or if there's a large number of students that does not return, then the programs schedule may have to be revised in that school in the fall. But basically the organization is done in the spring and before the teachers leave on summer vacation.

Q. Do you find most of the over-the-counter enrollments, as you refer to them, occur at the secondary level as opposed to the elementary level?

A. No.

[3850] Q. It occurs at all levels?

A. It occurs at all levels because they are from – they are from a number of sources. And one of the basic sources simply are the moves that many families make so that at the beginning of the school year there may be a large number of families whose children appear of those families that moved in during the summer.

Q. Do you have a registration day which is a few days perhaps in advance of actual school opening to give you some indication of what your problems are going to be? Do the counter, the counter enrollments take place on the day school opens or do you have those – do you have a leeway of a few days there?

A. Well, let me – let me say at this point that this is not one of the functions of the Schoolhousing Division, and I am speaking to the best of my knowledge, but I'm not in any of the schools on the opening day.

[3851] Q. I understand that, yes, sir. It does affect the Schoolhousing Division?

A. It you have large numbers then we have to make adjustments at those points. Normally there is not, to the best of my knowledge, there is not an advance day for new enrollment, but the students, all of the students come and those who are not, have not previously had programs made out go to the counsellors and get programs and they catch up with the organization of the school as soon as they can get a program made out.

Q. Do you have many situations where you have an unexpected amount of opening day enrollments?

A. The principal situations of this kind are the situations where we do have or where we have large numbers of young

families moving into a new neighborhood. This always involves a considerable accumulation of these families over the summer but in those neighborhoods it is a continuing process through the year. Every Monday morning there may be some new student arriving.

Q. If I understand what you are suggesting, you find that in the area of let's say changing neighborhoods, or where you have young families moving in or usually where you have black families move in, is that what you are referring to?

A. Yes.

Q. So where you have these areas of changing on the 1970 census[3852] map where it would be further out those are the areas you run into a lot of problems?

A. Yes.

Q. Would you find out in the white areas in the northeast and northwest your predictions are usually fairly stable aside from the parochial school problem, which flucuates as as I understand it?

A' In the outlying areas the projections are more apt to be very close and by very close I mean within a half dozen or dozen and they are more apt to all arrive on the first day of school.

Q. Within a week before school opens is it your general experience that you would know pretty well what is going to happen in those schools?

A. No.

Q. From information from the principals or what-have-you?

A. Not the week before school opens. There is no one on hand to know what is going to happen.

Q. The region superintendent doesn't know?

A. The region superintendent doesn't have any way to have a report from the school because there is no one at the school.

Q. The last report he would have from the school would be in May?

A. Normally.

Q. Or June at the latest?

[3853] A. Yes.

Q. The April 7 plan, as I understand it, or perhaps I should

ask you to describe it – the effect of the feeder pattern changes was a change of boundary line on an east-west direction? Could you describe the feeder pattern changes in some sort of general terms?

A. Well, it was on an east-west direction in most cases. With Western and Southwestern it was a north-south direction but the principal point here is not that it was east-west, but that it was a change of boundaries along principal transportation lines which for Northwest Detroit are the east-west mile roads and sometimes the half-mile roads, and that there is much better transportation, more regular, more frequent in the east-westerly direction than there is in the north-south direction.

Q. I have just place up on the board Plaintiffs' Exhibit 143-A, which is the April 7, 1970 high school zones. I understand the reasons for the east-west change and the effect of it in appearance, but what I am interested in is the mechanics of the feeder pattern schools and how they were rearranged. If you could just give me an example of how you rearranged the junior high school feeder pattern?

A. It was in the Redford-Cooley area the boundary line had been Southfield Road here, which left students having a considerable amount of north-south transportation. Nevertheless, Redford was [3854] on McNichols Road here, Cooley was on Fenkell here, Fenkell and Hubbell, so they were both right on east-west transportation lines.

The Redford High School service area under April 7 would have extended the Redford service area to the east and bring students in along the Six Mile coach all the way from Livernois actually and at the same time it would have exchanged with Cooley to bring students to Cooley along the Fenkell coach and along the Schoolcraft coach.

Q. What were the schools involved in the Cooley area in that change? Was that Cerveny and Cadillac?

A. Cerveny, Cadillac and Post. In all cases the high school service area would have been broken to serve the junior high school service pattern. We were not at least at that point proposing any changes in the junior high feeder pattern but simply dividing the students on a geographic basis to feed into the senior high school.

Q. If I understand the way the plan worked, for example, Burns fed into what junior high school?

A. Burns fed into Cadillac, which is directly south of it.

Q. So it continued to feed into the same school?

A. Yes, and it would have continued to feed under any circumstances. All of the elementary schools feeding into the junior high would have continued to feed on the same basis.

[3855] Q. They continued to feed to the same junior high?

A. Yes.

Q. Let's say you had a junior high with maybe three elementary feeder schools, did the plan not work so that part of those elementary feeder schools when they left junior high maybe one school would go to a different high school than the other two?

A. Yes, and this was a departure from the plan that we were working on earlier in the decade as I described it.

Q. I believe you referred to it several times as the articulated system of having kids go to school together throughout?

A. Yes.

Q. Would you describe that just briefly, what you mean by articulated in that description?

A. As an example the Burns, Cadillac and Edison students and Dossin students attended Cadillac as a junior high and then at the present time they all proceed together from Cadillac Junior High into Cooley Senior High.

Q. So the April 7th plan was a departure from at least that approach that you tried to take in the past?

A. Yes.

Q. Although in situations like the Burton feeder pattern we found that those kids did not articulate together from elementary school all through high school?

[3856] A. That's right. There have continued to be some places throughout the system where the full articulation was never achieved and the reasons for not achieving it, well, there are a variety of reasons including school capacity and specialized reasons such as those at the Burton.

Q. As I understand it your reason in the Burton area – you say it was special ed?

A. No, specialized reasons.

Q. That was to retain more black kids in the Burton Elementary School?

A. That's right.

Q. The April 7 plan, the reason for departing from that approach was also for integration purposes?

A. That is correct.

Q. If you recall I think you were in the courtroom when the A.L. Holmes busing matter was testified to and, as I recall the testimony and you may check me out, they received notices in May that youngsters would go to three schools in Northeast Detroit, that they would be transported to those schools and do you recall those schools – Richard, McGregor and Trix, I think might be three schools or some of those schools in that area?

A. Yes. The Trix was one of them and I recall also that I testified on this point previously.

[3857] Q. Perhaps Pulaski was also one, was it?

A. I don't recall whether the Pulaski was one at that time or not. Pulaski is one of the schools to which they were sent in February.

Q. Some of them are going to Pulaski now?

A. They are going to three schools now as we have indicated on the February mapping of transportation.

Q. Now at a later time, sometime before school opened within a week before school opened, I believe they were reassigned to McGraw, is that the way the situation was?

A. Yes.

Q. As I recall your testimony on direct they were reassigned to McGraw because of anticipated problems at those three schools or at the schools they were being assigned to?

A. Certainly not. That was not my testimony. My testimony was that they were reassigned because the schools to which they were to have been transported were not going to be –

Q. I don't mean problems in terms of human problems, I mean problems in terms of capacity and that sort of thing.

A. Problems in terms of there having been a transportation plan there which we had expected to terminate which we could not terminate because we did not secure the St. Philip Neri rental.

Q. That is as I recall your testimony that you weren't going to [3858] have space for them at those schools?

A. That is correct.

Q. How did you find out that you weren't going to have space for them at those schools?

A. St. Philip Neri parish notified us that they had rented their building to someone else.

Q. They notified you through your region superintendent?

A. No, through our own Housing Division staff that was negotiating the rental.

Q. Who made the decision to change the transportation from A.L. Holmes to the white schools to McGraw? Did you not testify that that was your region superintendent who made the decision?

A. None of these decisions are made exclusively by the region superintendent. What I testified to was that after we found we had to resume our previous transportation of approximately 600 students from the Carstens area to the schools to which they previously had been transported we were not going to have room there.

Q. Those were the Carleton and the McGregor?

A. I don't know.

Q. Let me check the exhibit. They are presently being transported to the Carleton, McGregor and Trix from the Carstens, so that was the transportation you resumed?

A. Yes.

[3859] Q. That you hoped you would not have to resume?

A. Yes. We had in fact notified those parents that the transportation would be discontinued and that their students would be going to St. Philip Neri.

Q. Would you look at the capacity chart which you have which is the 1970 capacity chart, the projection for September of 1970. That is from Exhibit 80. Would you look at the projected under or over capacity relative to let's say Pulaski, which was not involved in this thing until February.

A. Pulaski shows 260 under capacity which includes 95 specials who are trainable students. The trainable programs there was the largest program and that was actually extended into more rooms than a special ed program normally is and actually occupying much of that space.

Q. Do I understand the chart to mean that the 160 –

A. (Interposing) 260.

Q. The trainables, how many were involved?

A. 95 trainables.

Q. You had those 260 spaces aside from those trainables?

A. No.

Q. By "includes 260 trainables" you mean –

A. I mean that –

Q. The 260 figure is not after subtracting?

A. The 260 figure is a rough mathematical measurement which in this [3860] case does not represent the space that was available in the school with the trainable program there. The trainable program was actually extended out into the school more than it is indicated by the arbitrary mathematical formula that they were using to measure capacity enrollment.

Q. Are there any other schools on that chart that you were projecting in that area that would have enough space to handle the kids from A. L. Holmes?

MR. BUSHNELL: I will object to that question. That requires the witness to roam all around the district. If Plaintiffs have any questions –

MR. CALDWELL: I said in that area and he is looking at the page that involves that area.

THE COURT: He may answer.

A. The A. L. Holmes transportation involved 300 students. We didn't anticipate as we actually did in February of splitting them. There is one other school on this page, Richard, which shows by the rough mathematical measurement we had around 182 capacity.

Q. Plaintiffs' Exhibit 80 shows you transported 182 kids from A. L. Holmes to McGraw?

A. Yes.

Q. [3861] Why didn't you anticipate splitting the kids at this time?

A. We did explore that possibility. We explored the possibility with the two region superintendents involved. And as I indicated previously in my testimony it was their judgment in the spring or in the summer when they had to make the decision that in view of what their own estimates were and the uncertainty of the parochial enrollment that they did not add a – a safe margin for accommodating the students.

Q. That's even on a split basis you are talking about?

A. Yes.

Q. You are talking about –

A. Yes.

Q. And do you concur in that judgment?

MR. BUSHNELL: If the Court please, this is totally irrelevant whether Mr. Henrickson concurs or not. It's the judgment of the superintendents.

MR. CALDWELL: Well, he just said that the region superintendents did not make these decisions on their own and he talks about "we made this decision". I'm asking him if he concurred in it.

THE COURT: You may answer the question.

A. The reports that verified these changes are signed by the region superintendents, by myself usually for the Housing Division, by the assistant superintendent responsible for [3862] that region, Mr. McCarthy and the superintendent. In this case our signatures on the form would indicate that we concurred in the judgment.

Q. Well, I'm not asking you what the signatures would indicate. I'm asking if you did, in fact?

A. That's my response.

Q. Sir, would you answer my question, please? Did you concur?

MR. BUSHNELL: The question has been answered, if the Court please. It's been answered about five times in the course of direct and cross.

THE COURT: I think he has answered the question. It's argumentative.

MR. CALDWELL: Your Honor, he says that his signature appeared on the form. I'm asking him for his personal opinion as to whether or not he did concur in the judgment.

A. My signature is my indication of concurrence.

Q. (By Mr. Caldwell) Were you here when the decision was made to make that transportation?

A. As I recall –

MR. CALDWELL: Was he in the city?

A. As I recall there was no point in which all, during the summer in which all of the parties involved were present at one – in the city at one time. I concurred in this decision after [3863] my return from my vacation, and after reviewing the situation with those who were then present.

Q. (By Mr. Caldwell) Had the others already concurred or had they already made that decision as far as their individual responsibilities went, and signed the form at the time you did it? In other words, were you the last person to –

A. No, I was not the last person to sign. The superintendent was the last person who signed it in another case.

Q. Let me place up Defendant's Exhibit BB which is an overlay on selected major boundary changes, and under that is Detroit Public School map, Defendant's Exhibit FF, the original styled this exhibit, I believe, boundary changes which resulted in integration, and then you came back with this. But as I take it from your testimony, the purpose of this exhibit is to show boundary changes which improved integration, is that correct?

A. Yes.

Q. For example – well, let's get a point out of the way first. You referred to the Southwestern optional area as the boundary change, but it was really the elimination of an optional area, was it not?

A. Well, it's establishment of a firm, a firm boundary in the sense that there's not been a firmboundary. It was a boundary that changed.

Q. Well, as matter of fact, the boundary guidebook all through [3864] the decade shows that the Southwestern boundary exactly as it is outlined on this exhibit, do they not?

A. Yes. But they also showed that that northern portion is an option to got to Western.

Q. The boundary guidebooks never show this area as being also in Western, as far as the maps go, this area also being in the Western High School area, do they.

A. The Western High School maps, at least some of them if not all of them, show that as – as an area from which some students come. Western High map outlines – outlined that area to include that area also.

Q. The 1969 map outlines the area?

A. I'd have to check the maps to be sure. I know that some of them during the decade did. As far as I recall they all did. Maybe not.

Q. Would you look at the 1969 map and see if it does? That's Plaintiff's Exhibit 78-L.

A. I know the map doesn't but the –

Q. Verbal description shows it as an optional area?

A. Yes. The verbal description at the bottom of page 20 does indicate that – apparently Holmes pupils along with –

Q. You would call this, would you not, elimination of an optional area?

A. Yes.

Q. [3865] None of these others were solely, fell in that category, did they? I understand that the Condon area at one time

involved an optional area but none of these others that you have indicated show the elimination of an optional area.

A. Oh, yes.

Q. I'm sorry. I – Winterhalter, –

A. Yes.

Q. Aside from those three, are the rest of them actually boundary changes?

A. Yes.

Q. Do you recall when the Custer change was made?

A. Custer to Central change was made in '67, I mean, pardon me. It's Custer to Cooley.

Q. Do you know in 1957 and '60 what the Custer feeder pattern was?

A. Yes.

Q. What was it, sir?

A. Custer students stayed in Custer through the 8th grade. They went to Post in the 9th grade and returned to Central in the 10th grade.

Q. Then in 1961-62 do you know what the Custer feeder pattern was or do you know if there was a change?

A. There was a change made. I think that was the year. To put – have the Custer students proceed with the Hally students graduating from Post into Mumford.

[3866] Q. Then that continued, did it not, until the boundary change which is depicted on Plaintiff's Exhibit – Defendant's Exhibit BB?

A. Yes.

Q. Which changed Custer to feed into Post and then into Cooley?

A. Yes.

Q. Senior High School?

A. Yes.

Q. And then the following year, the year after this change was made, which I believe you said was '67-68, Custer was changed again, was it not?

A. Yes.

Q. And where did it feed this time?

A. Custer Junior High School students went into Longfellow which was just completing an addition, and the students who went into Longfellow were put into the Central High School feeder pattern. Those students from the Custer area who had already gone in the direction of Post and were in Post were continued, were allowed to continue in the Cooley High School feeder pattern.

Q. Now, if we can run through it briefly over the decade in '59-60, Custer went to Post and at that time Post was in what high school feeder pattern?

A. Well, normally it was in Mumford – Mumford. But actually it was split between Cooley and Mumford even then because [3867] Fitzgerald and Clinton went to Cooley, and Hally was the only one actually going into Mumford.

Q. So Custer went to Post which fed into either Cooley or Mumford but then Custer – the Custer kids came back to Central for senior high school in 1959 and '60?

A. That's right. After one year at Post.

Q. That's the situation where you violated the articulated feeder pattern objective, did you not?

MR. BUSHNELL: Repeat the question, please.

(The last question was read by the reporter.)

A. Well, that's the situation where we tried to remedy it to establish the articulated feeder pattern.

Q. (By Mr. Caldwell) The Post Junior High kids either went to Mumford or Cooley?

A. Yes.

Q. The Custer kids went to Cooley and back to Central – I mean, to Post, back to Central, so that they did not go to the same high school as all the rest of the Post Junior High kids went to, did they?

A. No, they did not.

Q. Then from '61 to '67-68 they articulated through Post and to Mumford?

A. Yes.

Q. And in '67-68 they articulated through Post and to –

[3868] A. Cooley.

Q. – Cooley. And then in '68-69 they no longer went to Post, as I understand it; they went to Longfellow Junior High?

A. Went to the – to Longfellow Junior High, to the newly converted junior high addition, and then went to Central.

Q. And back into Central?

A. Yes.

Q. So they ended up at, a decade later at the same high school in which they started out?

A. Yes. Having gone all the way around the mulberry bush.

Q. Yes. Now, you also show on that map a feeder pattern change from Cleveland Junior High. That was in –

A. '67.

Q. – '67. You changed the entire Cleveland Junior High feeder area from –

A. Pershing.

Q. Pershing into Osborn?

A. Yes.

Q. What would the elementary feeder schools be into Cleveland?

A. Davison and White.

Q. And that was in '67-68 school year?

A. Yes.

Q. And then what happened two years later with regard to the Davison Elementary School?

[3869] A. At that time Osborn had become overloaded in total population in relation to –

Q. I'm not asking you –

A. All right.

Q. – what the circumstances were. I'm asking you what happened to the feeder pattern?

MR. BUSHNELL: Excuse me. The witness is trying to answer.

MR. CALDWELL: He's not answered my question that I asked.

THE COURT: Just tell him what happened and then you can explain later.

A. Davison was returned to Pershing.

MR. BUSHNELL: Could I hear the question again, Mr. Reporter, please?

(Whereupon the last question was read back by the reporter.)

Q. (By Mr. Caldwell) Did you answer the question? I'm sorry.

A. Yes, I think so. Several times now. But I have answered it again.

Q. But you changed Davison?

A. No. I answered it several times during the course of this trial, and I have answered it again, but –

Q. I'm not suggesting that you haven't.

[3870] A. Yes.

Q. I'm driving to a different point than any point you have been aiming at yourself, you see.

A. Yes.

Q. You changed the Davison School; it still fed into Cleveland Junior High School two years later?

A. That's correct.

Q. But then later, rather than go to Osborn High School, went back into Pershing Senior High School?

A. Yes.

Q. Then you violated the articulated feeder pattern or object at that time, did you not?

A. Yes.

Q. Davison was virtually an all black school at that time?

A. Yes.

Q. And White was a majority white school?

A. It's about 50-50. It may have been a little one way or the other.

Q. In 1969 Plaintiff's Exhibit 128-B reflects that the White School was 36.8 per cent white. The following year which is this current year it was 42.5 per cent white. But back to 1969 Osborn was a majority or predominantly white high school, was it not?

A. Yes. And White was predominantly black, over 50 per cent.

[3871] Q. White? Perhaps I have misstated the exhibit, but it was 36.8 per cent black in 1969. If I was saying white in the school's name rather than the race?

A. Yes. That's what you were saying.

Q. Okay. So, it was predominantly a white school then?

A. Yes.

Q. In 1969?

A. Nearly 50 per cent.

Q. And Davison was a virtually all black school?

A. Yes.

Q. And Pershing was a predominantly black school?

A. Not predominantly in the sense of being 90 per cent or anything like that. It's somewhere in the 50, 60, 70 per cent range.

Q. Plaintiff's Exhibit 128-B reflects it was 57.7 per cent black in 1969. The effect of that feeder pattern change had the effect of placing more black students in the Pershing feeder pattern and less black students in the Osborn feeder pattern, did it not?

A. Yes.

Q. Back to Central for just a minute. When those Custer kids started out in 1960 they were going to a black high school, were they not? Central.

A. Yes.

Q. And in 1970 when they arrived back there it was also a black [3872] high school, was it not?

A. Yes. As were Mumford and predominantly Cooley at that point also.

Q. You considered that in response to any question I asked?

A. Yes. I consider that directly in response to the question.

Q. I'm placing on Plaintiff's Exhibit 109-A, which is 1959-60

MR. BUSHNELL: Has that been offered and admitted?

MR. CALDWELL: Ages ago.

MR. BUSHNELL: I have trouble keeping track of these little pieces of paper.

MR. CALDWELL: The overlay is Exhibit 109-M.

Q. (By Mr. Caldwell) In your direct testimony you talked about the fact that the Jeffries Housing Project, the youngsters were bussed to Hutchins, and you were able to trace it back to at least about 1955?

A. Yes.

Q. You also talked about Doctor Foster's alternative recommendation with regards to that situation. And, as I recall, one of Doctor Foster's recommendations was that – would you step down to the overlay, please?

(The witness walked over to the exhibit.)

Q. On this overlay the small school zone in the northern most part [3873] of that is the Tilden Elementary School, is that correct?

A. The Tilden Elementary School was located on the west side of the Jeffries, or of the Lodge Freeway.

Q. So where this black dot is on the – is the school, would it be? Is that not where the school is located?

A. No. That black dot is on the east side. The Tilden was a couple blocks west of there. West of the Lodge.

Q. Would you not say that this black dot is west of both of those expressways there (indicating)?

A. Oh, I was misreading the map. This – that's right.

Q. All right. Now, do you recall what Doctor Foster's recommendations were as an alternative to bussing the kids from the Jeffries Housing Project?

A. One of his alternatives was that those students from that area could have been placed in the Hutchins district and walk to Hutchins.

[3874] Q. You and Mr. Bushnell were severely critical of that suggestion, were you not?

A. Yes.

MR. BUSHNELL: If the Court please, I do object to the reference to counsel as being severely critical of expert witnesses. Counsel's role is that of an advocate and not an expert.

MR. CALDWELL: Since I can't back it up with a transcript cite I will withdraw the question and state it differently.

MR. BUSHNELL: Thank you.

Q. You were severely critical of that alternative, were you not, sir?

A. Yes.

Q. Did you understand Dr. Foster's suggestion to be that those kids could probably walk to Hutchins School and that in any event those kids could have been transported there rather than Jeffries Housing kids?

A. I understood the suggestion was that they could probably walk.

Q. You didn't understand his suggestion to be that in any event those kids could be transported to Hutchins rather than the kids from way down at the Jeffries Project?

A. I don't recall that but I wouldn't want to say he didn't say it. I just don't appear to recall it.

[3875] Q. If his suggestion were that –

MR. BUSHNELL: Is counsel making an alternative suggestion or is this in the transcript? If this is a hypothetical it has to be based on what the witness testified to. Or is Mr. Caldwell now attempting to make these plans –

Q. Let me state it a different way, Mr. Henrickson. Is it not a fact if you were transporting kids from Jeffries to Hutchins you could also transport kids from Tilden to Hutchins?

A. Yes.

Q. If the alternative suggestion were made that in 1960 you could have transported the youngsters from the Tilden area to the Hutchins rather than the Jeffries Housing Project area to Hutchins what would your criticism be to that proposal?

A. The criticism would be that we had an alternative suggestion under way and the students already started at Hutchins were best served by being continued there until the alternative, the completion of Pelham was ready as a remedy for the situation;that simply changing arrangements each year for the sake of change or commotion was not going to be helpful to any students.

Q. Is this an alternative you initiated to relieve the problem?

A. The alternative was initiated as part of the building program.

Q. Which was 1959?

A. 1959, which was the construction of Pelham Junior High.

Q. When you came to the system in 1559 did you find any efforts [3876] already under way at that time to alleviate the problem of busing the kids from Jeffries Housing Project to Hutchins?

A. No.

Q. Would you agree with me that at any time between 1955 and 1959 youngsters could have been transported from the Tilden area to the Hutchins School as opposed to those in the Jeffries Housing Project area?

A. As a hypothetical possibility that is a hypothectical possibility. I wouldn't agree it would have any merit.

Q. Would you also agree that as a hypothetical possibility or perhaps as a fact that the youngsters in the Tilden School area were white, predominantly?

A. The students in the Tilden area were predominantly white. They would have been in a very substantial minority in the Hutchins School.

Q. Do you have something against sending white kids to a black school?

A. Not personally, no.

Q. Did you have in 1960?

A. In 1960 we had another alternative plan to remedy the situation.

Q. Are you suggesting then that prior to the time you came to the system and that this alternative plan was initiated that the school system was opposed to sending white kids to a predominantly black school?

[3877] A. (I have no basis for judging –

MR. BUSHNELL: If the Court please, I am going to object to this line of testimony until it is established that there was some legal obligation to transport whites to black schools or, indeed, to transport anyone.

MR. CALDWELL: I am not asking anything about Mr. Henrickson's understanding of legal obligations, I am asking him about facts.

THE COURT: Two things, one, I am surprised by the statement you just made, Mr. Bushnell, and as far as the question itself is concerned it calls for a conclusion the witness need not speculate on.

MR. CALDWELL: What I was trying to get at, your Honor –

THE COURT: I know what you were trying to get at , but the question as framed calls for a conclusion.

MR. CALDWELL: In response to a different question Mr. Henrickson blurted out that that would have been sending white kids to a black school and I am just trying to find out if when he came in in 1959 –

MR. BUSHNELL: (Interposing) Mr. Henrickson did not blurt that out. This is what Mr. Caldwell has been jumping up and down in the place about.

MR. CALDWELL: I asked him if the Tilden [3878] kids were white and he said yes, that that would have been sending white kids to a black school.

MR. BUSHNELL: I think you misunderstood Mr. Henrickson. He never said anything like that.

MR. CALDWELL: Perhaps I did misunderstand him.

MR. BUSHNELL: The thrust of my objection was the legal obligation to transport them.

MR. CALDWELL: I am not suggesting there was.

THE COURT: The question that I was considering was the one which called for an expression on his part with respect to what policy had been pursued prior to the time he joined the system and which by inference was then outstanding so far as the Board is concerned and I said that calls for a conclusion that he need not specultate on.

MR. CALDWELL: I understand that ruling, your Honor, and I will leave that point.

Q. (By Mr. Caldwell) Mr. Henrickson, at page 3129 of the transcript Mr. Bushnell asked you this question:

"Actually in 1960 according to Plaintiffs' Exhibit 128-A it was 41.3 percent – "

"It" refers to Chadsey, the previous question which concerned Chadsey in 1960 - 1962. Continuing with the [3879] question:

"--in '62 it was 44 percent. The Newberry in '60 was 87.8 percent black. It has been intimated or inferred or left dangling that the reason for the optional attendance area in Newberry was to permit 12.2 percent whites to go to Chadsey rather than Northwestern which was predominantly black, was it not?"

"Answer: Yes."

As you understood that question at that time and at this time where did the 12.2 percent white figure that Mr. Bushnell used come from? Let me suggest that it appears it came from subtracting the 87.8 percent black from the 100 percent leaving 12.2 percent white. Would that be your understanding?

A. Yes.

Q. So that would be 12.2 percent white in the school, would it not?

A. Yes.

Q. Would you agree that Mr. Bushnell's question, however, intimates that those were all of the white youngsters who lived in the Newberry area and that your answer also reflects that intimation? That part of the question was, "—it has been intimated or inferred or left dangling that the reason for the optional [3880] attendance area in Newberry was to permit the 12.2 percent whites to go to Chadsey." My question is is the intimation from Mr. Bushnell's question about intimations, is that those youngsters who live in the Newberry optional area, the 12.2 percent whites who went to the Newberry school, were all of the whites that lived in the optional area. Was that your understanding of the question and answer?

A. Well, we were speaking of the progression of students in the public schools and the language may have been loose to imply that there were no parochial school students there as there are in fact.

Q. As a matter of fact in your racial figures you reflect only those youngsters in the Newberry School?

A. Yes.

Q. They do not reflect the youngsters in the Newberry area whose parents drove them out into the Redford area, if there were such children, would they?

A. Well, I know of no circumstances in 1960 since we did not have an open school policy so that there would have been parents doing that.

Q. I understand that that possibly it was not a factual situation but the figures Mr. Bushnell read only reflect the number of kids and percent black in the school, not the number of kids or percent black in the population of either public or private [3881] school kids?

A. They don't reflect indirectly, no.

Q. As a general proposition that is true throughout the district, is it not, the enrollment figures only reflect the kids who enrolled in the school, not the kids available for enrollment there?

MR. BUSHNELL: I will stipulate to that.

MR. CALDWELL: Thank you, sir.

Q. Under the 1959 building program I believe you proposed to build a Clark High School. Do you recall that?

A. Very well.

Q. Is that the high school that ultimately became the Finney High School?

A. Yes.

Q. Was Clark Elementary School in existence at that time?

A. Yes, it was.

Q. The initial listing of the project for a high school in that area was listed as a Clark conversion and a replacement of Clark as an elementary school? I am pointing to the Clark Elementary School here or the zone is just west of the Hanstein zone (indicating) and the Hanstein zone is the easterly most zone in the Finney High School area or one of the two easterlymost zones.

At that time the Clark Elementary was in [3882] existence, as I understand your testimony, and you proposed to convert that by way of addition and what-have-you into a high school?

That was what was indicated by the listing in 1959, January 1959 priority listing, yes.

Q. Subsequently you made the decision to do that same sort of thing at the Finney Junior High School, the Finney Elementary School?

A. Subsequently I made a recommendation to the Superintendent that the Finney was the more appropriate school for this purpose and a more appropriate location and the Superintendent accepted my recommendation and there was a great deal of consternation in the community about it.

Q. The Finney School is further east, is it not?

A. Yes, and on a coach line.

Q. Do you recall when Miller Junior High School – yes– when it was a high school?

A. Yes, I do.

Q. About what period of time was it a high school? During what period, approximately?

A. It was originally built as a junior high school or intermediate school as it was called then. I don't recall when it became a high school. It was one of the first actions of Dr. Brownell's administration to reconvert it to a junior high school sending [3883] the senior high school students into the old Eastern High.

Q. I believe the inventory facilities of needs indicates Miller was built around 1920?

A. Yes, I believe that would be correct.

Q. It was built as an intermediate school and subsequently you say it was converted to a high school?

A. Yes.

Q. Would that have been around 1940 or before that even?

A. I don't recall the date. That is a plausible date.

MR. BUSHNELL: Perhaps Mr. Caldwell, I could help. It was a high school before then– while I was going to high school it was a high school.

MR. CALDWELL: I won't ask you when you were going to high school.

Would you say it was in the 1930's a high school?

MR. BUSHNELL: Yes.

Q. Let's approach it a different way. Miller Junior High School is located in what in 1959 was the Eastern High School area and what is today the King High School area, is that correct?

A. Yes.

Q. At that time Eastern High School was also in existence, was it not?

A. Yes, and the building still is.

[3884] Q. The building is being used for some other school purpose now?

A. Yes.

Q. Is that a mile apart or two miles apart?

A. A little over a mile; it would be close to two miles I believe.

Q. When Superintendent Brownell eliminated Miller as a senior high school he converted it back to a junior high school to feed into Eastern High School?

A. Yes.

Q. Do you remember about when that was? Was that in 1958 or so?

A. I think it was the second year I was here, which would have made it 1957.

Q. Let's go back to 1940 momentarily. Eastern High School was also in existence in 1940, was it not?

A. Yes, since 1898 I believe, or 1900.

Q. I'm sorry, I didn't hear the answer.

A. Since 1900, yes.

Q. If you would step to the map. I am holding Plaintiffs' Exhibit 16-A, which is the 1940 census map. And could you point out on this census tract map where the Miller High School was in 1940?

A. It is just south of Vernor and just a little east or west of Chene, approximately in this area here (indicating) in Census Tract 510.

[3885] Q. That is an orange census tract surrounded by three orange, two blue and two red census tracts?

A. Yes.

Q. And one white, Mr. Curtner says, and I will take his word for it.

Do you know when Superintendent Brownell eliminated the high school, what its attendance was?

MR. BUSHNELL: Excuse me, this was in 1957 before Mr. Henrickson came to the system.

MR. CALDWELL: I am just asking him if he knows about what it was.

A. It included some students north of Gratiot but I am not certain how much because most of the area north of Gratiot was in the Northeastern High School service area.

Q. (By Mr. Caldwell) Was the school a predominantly black high school?

A. Yes.

Q. Do you think it was probably predominantly black in 1940 from looking at the census tract data?

MR. BUSHNELL: That calls for a speculative answer and I will object.

MR. CALDWELL: It is not all that speculative, your Honor, the school is situated in a black residential area and was at that time.

[3886] THE COURT: It's a matter of argument in any event because the exhibits will speak to that, if you know what the service area is. We have the '40, '50, and '60 and '70 population map, so your overlays with the racial population maps you would be able to indicate without any question what the racial complexion of the service area was.

MR. CALDWELL: I want to ask a couple more questions and I will try not to step over the bounds the Court laid down but you tell me if I do.

Q. By 1959 at any rate, Eastern was a predominantly black high school, was it not?

A. Yes, I believe so, although I don't recall the percentage at this point.

THE COURT: Your underlay is 1960.

A. Yes.

Q. (By Mr. Caldwell) Excuse me just a minute. Plaintiff's Exibit 100-A which is the '60 - 61 racial count shows 151 white kids and 2290 black kids in Eastern at that time.

A. Yes.

Q. So it was over 95 per cent black?

A. Yes.

Q. Had it been a predominantly black school throughout the decade? Were you familiar enough with it then to know?

A. No, it had not been. I am quite familiar with the change which [3887] occurred during the decade within that east side

area and as late as '53 the area along the Boulevard particularly the area east of the Boulevard was still predominantly a white area.

Q. So this area in here is blue and green and white in 1950?

A. Yes.

Q. And in 1950, Miller Junior High, what was then Miller Junior High is located in the midst of an area which is all red surrounding it and then orange with one portion of blue?

A. Yes.

Q. Then in 1957 approximately that date, the Miller Senior High School was closed, converted – not closed – but converted to a junior high school and those youngsters went to Eastern?

A. Yes.

Q. By 1957 Eastern was either predominantly black or approaching predominantly black?

A. There had been continuous change in the area over a decade.

Q. Do you know whether or not Miller was maintained as a high school for the black people in the Eastern High School area?

MR. BUSHNELL: When?

MR. CALDWELL: At any time. I am not trying to press him if he doesn't know, I'm just asking him that question.

A. I don't know. There is certainly a great deal of hearsay opinion to that effect.

[3888] THE COURT: I think we better take a break at this time. With respect to Doctor Skelly, have you got the matter resolved or not?

MR. LUCAS: Yes, sir. Your Honor, we have no objection to these transfers. It is our understanding each of these transportables holds 64 students, is that correct?

MR. VON ENDE: That is what we were informed by Doctor Skelly.

MR. LUCAS: It is our opinion they are covered by the order which does provide for the location of any temporary or modular school units. As I said, we are willing to agree but we would like to

file this statement so we have a record of what has been done and have it as part of the record.

I don't know whether we should mark it as a joint exhibit or not. Do you have any objection?

MR. BUSHNELL: Why don't we make it a joint exhibit and ask Mr. Miller to simply copy it and enter it into the record at this point.

THE COURT: I think that would be best.

MR. LUCAS: That will be fine.

MR. BUSHNELL: Thank you.

A letter dated June 22, 1971 was marked Joint Exhibit 1 by the reporter and reads as follows:

[3889] "DEPARTMENT SERVICE"

SUBJECT: Movement of Transportables

FROM: Department of Planning and Building Studies, per Merle Henrickson

TO: Dr. Alvin G. Skelly, Deputy Superintendent

DATE: June 22, 1971

The following proposed transportable moves contain issues which merit further examination and a possible appeal for exceptions to proceed.

1. Farwell to Cooley—2 transportables.

In this case two transportables must be moved from the Farwell site in order to complete the grading and paving portions of a construction contract nearing completion. At Cooley there is also a construction contract under way which involves taking three rooms out of service. The two transportables are intended to maintain the level of instructional spaces during contruction.

2. Longfellow to Redford

Redford high school has an anticipated anrollment for September, 1971 of 4,062. In addition, there are 241 magnet school applications. [3890] The additional rooms will

seriously affect the ability of Redford to accept magnet school applications.

3. Longfellow to Harding

Harding will be approximately 150 over capacity in September. The intention of the portables is to reduce the scheduled instructional use of the gymnasium in order to provide a lunch program not now available."

[3891] Q. Mr. Henrickson, I believe you testified on direct examination that the site designation for new King High School was in 1962?

A. I think that's correct.

Q. Is that correct? About that time, at any rate?

A. Yes.

Q. Also at that time I believe you testified that there was a charge from the community that you were going to build a high school as a white high school for the kids in Elmwood and Lafayette Park?

A. Yes.

Q. Now, I have placed on the board here Plaintiffs'—or Defendants'—Exhibit Y which, as I recall, is styled "Service Areas of New Senior High School Additions Constructed 1959 to Date." As I also recall your testimony these were the boundary lines which existed which were the proposed boundary lines in The Price Of Excellence, at least those of 1959 dated?

A. Yes.

Q. So in 1959 the proposal for King High School, this was your designated or projected boundary line for King High School; that is, as depicted on Defendants' Exhibit Y (indicating)?

A. Well, it was more – it was more specifically described in a recommendation that I made to the Board in 1960. The 1959 [3892] listing had indicated a new – a new high school on – on the east side which was to be Kettering and a replacement for Eastern – and the precise boundaries of the two, the service areas of the two was – was I think first described in a report that I made to the Board in 1960. And then it was incorporated in The Price of Excellence in 1962.

Q. So that would be all of these – these boundary lines dated 1959 were incorporated in The Price of Excellence?

A. Yes.

Q. As projected boundary lines –

A. Yes.

Q. – of these new high schools?

A. Yes.

Q. Were the charges with regard to the proposed new King High School, at that time it was proposed as a replacement high school for Eastern High? Is that correct?

A. Yes.

Q. Did you also have – all right. In 1962 you had a site designation. Did that appear in The Price of Excellence, or –

A. (Interposing) No.

Q. That was published before or prepared before that time?

A. No.

Q. I'm not trying to make a point of it.

A. I don't recall.

[3893] Q. Well, in the way The Price of Excellence was '62, and somewhere around '62 you designated the site?

A. Yes.

Q. When you did designate the site the site was not the same site as the Eastern High School?

A. That's right.

Q. Now, you say there were – you said there were charges from the community that you were building the high school as a white high school for the kids in Lafayette Park and Elmwood. Were those charges the product of the black population of past experience with regard to the Miller High School?

A. This perhaps provided fertile ground for suspicion. The charge was specifically made.

Q. We would agree, could we not, that regardless of what the community accused you of thinking in 1959 or 1962, but the Board knew it was building a high school which would be over 95

percent black in 1959, and when it designated the site in 1962, could we not, sir?

A. No. The – the high school site as it was designated was within the redevelopment area which is known as Elmwood Redevelopment Area which is adjacent to the Lafayette Park. And the experience to that time of Lafayette Park was that there were a substantial number of white families living in Lafayette Park and moving in, and the Board faced the – the prospect, and, if [3894] you will, the problem that it had within this high school service area; a great diversity of socio-economic groups, and ethnic groups, and planned the building and the program explicitly to meet the needs of the whole range. What percentage of the area might ultimately be – percent of families there might ultimately be white or black is quite indefinite at that time. And I must say it is still not clear what the future source of rebuilding of the inner city will result in.

Q. Your proposed boundary line was with the exception of the northeastern corner, coterminous with the existing Eastern High School boundary line, was it not the only change being that you cut off the northeastern corner of it (indicating)?

A. That would be – that was the gross change. There was also some refinement of the line of the eastern boundary to establish it at McClellan where previously there had been a very jagged pattern of boundaries between Eastern and Southeastern.

Q. Look at the 1960 census map; the proposed boundary doesn't purport, or did not purport at that time to include into the eastern area any more white residential areas than already existed in the eastern area, did it not? Did it?

A. No.

[3895] Q. And Plaintiff's Exhibit 100-A, which is the racial count for 1960-61, shows that at that time there were 151 white kids in Eastern, 2,290 blacks. In March, 1963, Plaintiff's Exhibit 100-B reflects that there were 37 white kids in Eastern – this is 1962-63 school year, 37 white kids in Eastern, 2,310 blacks. And about that proportion of blacks and whites were in the high school when it first opened and are also in it today, is that not correct?

A. In attendance there have all – there have been and are additional white young people of high school age. And the com-

mittee that planned the school was concerned about offering a program that would attract those students to attend the new high school.

Q. Now, when was the site designation made for Kettering High School? Was it made along about the same time?

A. No. The site designation for both Murray and Kettering were made much earlier. I believe they were both made in 1960, if I recall. I know we were in acquisition on Kettering much earlier.

Q. Kettering opened in 1965, I believe, is that correct?

A. Yes.

Q. And let me turn over to 1960 overlay over this. In 1960 you proposed for Kettering the northern portion of the Northeastern zone?

[3896] A. Yes. The Burroughs Junior High School district.

Q. And also a portion of the former Eastern zone?

A. Which would be the Barbour Junior High School district.

Q. And your site designation – now, in your boundary guidebooks in 1961-62, you have this portion designated as the proposed Kettering area without the Eastern portion. Would the boundary guidebooks represent fluctuating ideas about how the boundary lines were going to be?

A. The boundary guidebooks represented what were the attendance areas at that time until – until the –

Q. Until the high school was built ?

A. Until the high school was built. Now, if we indicated further Kettering – this is simply by way of indicating further Kettering, that was Northeastern service area at that time.

Q. You were just indicating the Northeastern service area would be Kettering?

A. Yes.

Q. And maybe something else would be, too?

A. Yes.

Q. Let's turn over to the '65 overlay. And we find that Kettering was located in – relative to the Northeastern area, Kettering was located in the southeastern portion of the northern half of the Northeastern area. And this is a site designation that you made in 1960, is that correct?

[3897] A. Yes. The site designation does – that was made in 1960, was that the report that I referred to a little earlier which indicated what the future service areas of both high schools were to be. The Kettering was to be Barbour and Burroughs, and the Eastern, the new Eastern was to be Miller and what was then the proposed Butzel.

Q. All right. Am I pointing just about where the Kettering High School is (indicating)?

A. Yes.

Q. All right. Now, that's where you selected that site in 1960 to go with this assistance area?

A. Yes.

Q. Which you also proposed about that time?

A. Yes.

Q. All right. Now, this site is in the southeastern portion, or the southeastern portion of the proposed Kettering High School zone, and the southeastern portion of the existing Northeastern zone, is that correct? Or, the northeastern half of the existing Northeastern zone?

A. Well, it's at the intersection of Van Dyke and the Freeway.

Q. All right. The top half of the Kettering zone is white residental area?

A. Yes.

Q. The southeastern half is black residential area?

[3898] A. Yes.

Q. Relative to those two residential areas, the Kettering is located in a blue area (indicating), right adjacent to an orange area?

A. Yes.

Q. All right. And the rest of that portion, the southeastern portion of that Kettering area is orange –

A. Yes.

Q. –representing 50 to 84.9 per cent black?

A. Yes.

Q. Also at this time, 1960, when you selected this site you knew that all the kids in the existing Eastern School in existing Eastern boundary which you proposed to make a part of the Kettering boundary were black, did you not?

A. Yes.

Q. And also at that time you knew that Northeastern was a predominatly black high school?

A. Yes.

Q. I'm sorry. Did you say yes?

A. Yes.

Q. We have already stated the Eastern – the number of white kids in the Eastern zone in 1960 and in the Northeastern we find that there were 437 white kids and 1,648 black kids. And then I think you would agree that it decreases to about 100 by the [3899] next year in terms of number of white kids in Northeastern?

A. Yes.

Q. The place where it reflects that 132 white kids in Northeastern in 1962-63 school year?

A. Yes.

[3900] Q. And yet you projected Kettering to be an integrated school, you testified to on direct?

A. That is right.

Q. Despite the fact there weren't enough white kids then attending any of the schools which you proposed to have

Kettering serve? You made that projection?

A. Burroughs was predominantly white, which was going to be one of the feeder schools into Kettering.

Q. The point is, however, it was also one of the feeder schools into Northeastern, was it not?

A. Yes.

Q. In 1960 only 400 white kids were being fed into the entire Northeastern area, I mean into the Northeastern High School from the entire Northeastern area?

A. Yes.

Q. And probably no white kids from that portion of the area in the Eastern zone were being fed into Eastern? So this was all black, this southern portion of the Kettering zone, and you also knew at that time that a large portion of those youngsters who lived in the white portion of the Kettering zone were in attendance at private schools, did you not?

A. We knew at that time that there was a large residual Catholic population in both the Northeastern area around Greusel and the Burroughs area north of the Freeway.

[3901] Q. Who were attending private schools?

A. Attending parochial schools, yes, some of which have closed subsequently.

Q. I am now placing up on the board Defendants' Exhibit W which is the February 1971 transportation to relieve overcrowding and under that is another overlay, Defendants' Exhibit V, which is the October 1970 overcrowding and then under that is the rest of the exhibit you testified to which was Plaintiffs' Exhibit 110-S, the after-promotion September 1970 over and under capacity.

Now, on that chart there is an area which you have designated "Capacity to be Recomputed." Over this area I am placing an overlay which I am marking Plaintiffs' Exhibit 181. I think that is our next exhibit number.

At this time I would offer Plaintiffs' Exhibit 181 into evidence.

MR. BUSHNELL: What does this purport to show?

MR. CLADWELL: I have shown it to your co-counsel.

MR. BUSHNELL: I am asking you what it purports to show.

MR. CALDWELL: It purports to show the amount of spaces available in those schools as listed on [3902] Plaintiffs Exhibit 130.

MR. BUSHNELL: As of what period in time?

MR. CALDWELL: As of this past school year, 1970–71 school year.

MR. BUSHNELL: You are saying that these capacities or under capacities in these schools that are listed in what?

MR. CALDWELL: It is the same area which is designated on the underlying map as capacities to be recomputed. This overlay has written on it the names and the under or over capacity in green of each school.

MR. BUSHNELL: Would you give us the source?

MR. CALDWELL: Plaintiffs' Exhibit 130, which is our exhibit and the School Board capacity charts, Exhibit 80 and the white book which is Exhibit 90, the Selected School Data book dated January 1970 — I'm sorry, Plaintiffs' Exhibit 92.

MR. BUSHNELL: I think this is irrelevant and immaterial since the testimony has been and it is established on this record that these schools that are represented by Plaintiffs' Exhibit 181 are schools were there has been an effort at success in reducing class size and, therefore, the capacities from the sources referred to by Plaintiff are irrelevant to the program that is going on there now.

[3903] THE COURT: The objection is overruled. The exhibit is received. What number is it?

MR. CALDWELL: 181, your Honor. I think that was our next number.

Q. (By Mr. Caldwell, continuing) I believe you looked at Plaintiffs Exhibit 181, have you not, Mr. Henrickson?

A. Yes.

Q. And does it show the number of spaces available, first of all, all of those schools which are designated on that exhibit are marked in green indicating they are all undercapacity and that there were no over-capacity schools in that area, is that correct?

A. This is your indication. It is your marking of them in green. It is not our marking of them in green.

Q. If you take the method in which you computed the capacity at Goodale and you computed that capacity for these schools in this area, would these schools in this area be marked in green as we have designated them with the same number of under capacity shown?

MR. BUSHNELL: Objection -- apples and oranges.

THE COURT: That is a ground I don't recognize as legal.

MR. BUSHNELL: Irrelevant and immaterial.

THE COURT: (Continuing) Not having been [3904] in the fruit business.

A. The capacity that is used in arriving at the numbers used in green here is the capacity computation that is used for Goodale but it is irrelevant in this area because we have the class size reduction program there and if I may illustrate a case: the Edmonson is listed as having a capacity of 2176 and the prospect of being 733 under capacity.

Q. What school is that again, please?

A. 733 under capacity.

Q. What is the name of the school?

A. The Edmonson. However, when you operate a 22-class size which was authorized in the Model Neighborhood Program the capacity in effect is reduced by one-third; the capacity becomes 1450, not 2176.

Q. I understand that, sir, but my question is if within this area you compute the capacity the same as you do throughout the remainder of the system you have that many spaces available for kids if you are willing to put that many kids in those classrooms as you are in the other schools?

A. Yes.

Q. How long have you been under the Model Neighborhood class reduction program?

A. The Model Neighborhood Program affected this past school year, the other programs, the State Aid Section 3 and the NEA, [3905] Neighborhood Education Program extends back for

at least three years.

Q. So prior to three years, well, are all of these schools in this area here under Model Neighborhood, the one you have capacities to be recomputed on?

A. No. The area included here is the area in which schools are covered by any one of these three programs.

Q. At any rate this year is the first year that on your over and under–capacity charts or your maps you have blocked out that area and designated capacities to be recomputed?

A. I didn't think so. Perhaps it is. I thought we done it last year, but maybe not.

Q. I don't recall seeing it last year, but if we can find one I will be glad to stipulate to it at a later time.

THE COURT: Let me see if I can get this straight in my own mind, Mr. Caldwell.

The programs which you say, Mr.Henrickson, warrants and in fact demands a different type of calculation for capacity have been spaced over several years, the last one being initiated in the last year?

A. Yes.

THE COURT: I think the oldest one being perhaps three years old?

A. Yes.

[3906] THE COURT: Were the capacities tabulated for these schools on a basis taking into account these factors at any time?

A. No. We have never done it because each of the programs has a different formula for class size reduction and in some of the schools there are funds from two of the programs so that we have such a mixture within the area that we just didn't consider it a useful exercise to try to represent any capacity other that to carry our 32 capacity on these forms as a general guide.

[3907] THE COURT: And the principal differential then is that in the inner city under these programs you have undertaken to limit class size?

A. That's correct.

THE COURT: Below what is standard for the school system?

A. Yes.

THE COURT: As a whole?

A. As much as from 32 to 22.

THE COURT: I just want to be sure I understood his testimony.

Q. (By Mr. Caldwell) I believe you testified last week that the Model Neighborhood class reduction funds were going to be considerably reduced for this coming year, did you not?

A. Yes.

Q. Do you recall what that reduction was?

A. I have — I have not been able to get from our people who work with these special funding programs an estimate of what level we would be able to achieve under any of the three programs for the next year. In fact, as far as the state program is concerned, the legislation is under special appropriation and has not been enacted at this time.

Q. 1959 building program I believe you told us, perhaps in deposition, I don't recall, that you built seven primaries, and [3908] then since 1965 you built several other primary units, small primaries. Does that — is that correct?

A. Yes.

Q. How many have you built approximately since '65?

A. I think — I can think of six at the moment. We have in some cases built these as independent structures, and we have somehow, some places built the rapid construction system additions to main buildings so that six is the number I recall at the moment.

Q. These are relatively small schools, are they not?

A. These fall into the size range of 300 to 400.

Q. Do you agree with me, sir, that small schools defeat the objective of integration?

MR. BUSHNELL: I would ask that the question be rephrased. I don't understand it.

THE COURT: I think the question is plain.

A. No. I wouldn't agree that small schools defeat the purpose

of integration. Small schools obviously have smaller service areas, and in some cases -- in most cases where we build them we are building them under circumstances of increasing enrollment which is becoming progressively black enrollment.

Q. (By Mr. Caldwell) Do you recall Plaintiff's Exhibit 138 where you talked about the New York proposal to go on K–4–4–4 system?

A. 138 is, I believe, the Task Force?

[3909] Q. Yes.

A. Suggestion? Yes. I think I made some reference to that up here.

Q. And there's a statement in there which -- first of all you talked about -- you say the New York proposal, I'm quoting now:

"The New York Proposal in effect abandons the effect of integration from Grade K–4 with past -- very young children to be within walking distance of schools. It may equally be argued that racial attitudes are frequently formed in the very young and hard to eradicate at age 10."

Then the last sentence on the page, you say, you talk about creating a large number of middle schools, and you say:

"Creation of a large number of smaller middle schools on the other hand would defeat the intended objective of large service areas with heterogeneous social and racial composition."

I believe -- well, while we are still talking about Exhibit 138

THE COURT: Well, is that a question or a statement?

MR. CALDWELL: I'm sorry, your Honor.

Q. (By Mr. Caldwell) Do you recall that general idea in 1967?

[3910] A. Yes. That's – an observation relation to the size of the service area of various school.

Q. The open school policy was altered in 1966 to place a limitation, to have an emphasis on the fact and effect that transfer would have on receiving school, was it not, or somewhere around 1966?

A. Yes.

Q. And prior to that time the open school policy had had an adverse effect on integration, had it not?

A. It certainly had not. I covered that point considerably -- at considerable length, and it certainly did not have an adverse effect on integration. It tended to move black students into white schools and increasing -- increasing in its effect from the time that the policy of movement to the nearest school was affirmed in 1960.

Q. But it also had an adverse effect on the integration of the inner-city schools, did it not?

A. It had no effect on the inner-city schools.

Q. Page 9 of Exhibit 138, you say:

"Under the original rules the open school policy also accelerated movement of white students from schools with increasing enrollments of Negro students as defined in more recent regulations. This escape valve has been closed except the families that chose to move."

[3911] Then on page 11 you say:

"The modification of policy in September 1966 was due to the fact that the greater effect of the policy to that date had been to draw white students away from inner-city schools."

You recall making that statement, Mr. Henrickson?

A. Yes. I recall that. I had -- to the extent that I might revise my answer to the previous answer. I would still concur in that statement.

Q. I believe you told us in one of your depositions that --

THE COURT: Let me see if I can see what the witness was saying on both occasions.

MR. CALDWELL: Certainly, your Honor.

THE COURT: Am I correct in concluding that what you are saying, Mr. Henrickson, is this: That under the open school policy so far as the areas outside the inner city are concerned, they in effect advanced integration, whereas in the inner city of course the opposite effect?

A. It had the opposite effect to the extent that in the earlier

period drained off some white students, yes.

Q. (By Mr. Caldwell) I believe you told us that in your November 24th deposition, that you had some problems with the McDonald Plan, that although you worked on the Campbell Plan and the [3912] April 7th Plan, you did not do any work on the McDonald Plan. Do you recall that testimony, and do you also recall the reasons or the problems that you had with the McDonald Plan?

MR. BUSHNELL: Now, if the Court please, I do believe this is irrelevant and immaterial. There is a plan, a so-called Magnet School Plan which is the McDonald Plan that we are now operating under. This line of inquiry seeks to attack that, reopen the question and I think it would only be proper if plaintiff filed an appropriate motion to reconsider all of that that we visited last -- some time early last spring.

THE COURT: Well, two observations: You have a double question. Let's break it down.

MR. CALDWELL: All right.

THE COURT: And find out if the witness agrees with your statement as incorporated in the question. And, that is, whether you had in fact said whether it's true that you had worked on the two other plans but had not had much to do with the McDonald or Magnet Plan.

A. Yes. That's correct.

THE COURT: Allright. Then, I think the second part of the question, and it was a separate question, really, what you found wrong with the Magnet Plan. Now, at this point I will consider Mr. Bushnell's objection, but I [3913] will have to overrule it because his own witness went into this plan, the Magnet School Plan, and I think you may go as far as this question goes anyway.

MR. CALDWELL: Thank you, your Honor.

A. Well, I -- I think I would have to say that the numbers which were presented in Court last week bore out to a considerable extent my initial misgivings about the Magnet Plan to the extent that the Magnet Middle School Plan is operated or is structured to operate within regions. There's the inherent problem in some regions that they are comprised of predominantly white or predominantly black, and the effect of that situation in Region 8, for example, is that if you provide a Magnet middle school and

secure two or 300 white students, 250 white students to match up with 250 black students, you will secure them only by virtue of taking the remaining white students out of Miller and Russell and Barbour and Post and completely eliminating enrollment of white students in those schools.

Q. (By Mr. Caldwell) As a general proposition, and there would be exceptions on both sides of this coin, we find that most of the white schools -- white high schools are overcrowded and most of the black high schools are undercrowded, with some exceptions on both ends, let's say. Is that correct?

A. Yes.

Q. If you made those black high schools open schools, consistent [3914] with your open school policy throughout the decade, would it be your opinion that white youngsters would not elect to attend those black high schools?

A. White students have elected to attend.

Q. Miller Junior High?

A. No. I'm not speaking of Miller Junior High. I'm speaking of senior high schools. They have elected to attend special programs at Chadsey and Cass which are the substance of what we are talking about in a magnet school plan. The numbers that have ever elected to go to school under a simple open school basis, I don't recall. I think there's some attraction of white students to at least mixed or integrated schools for specialized programs.

Q. I was basically talking about the, say, overcrowded Denby, the white students from there electing to go to, say, Northern?

A. Yes.

Q. Your opinion would be that that is not true?

A. I have expressed the opinion earlier that the numbers which Doctor Della-Dora presented last week reflects precisely that situation. And this illustrates my misgivings about the limited effectiveness of the program.

[3915] Q. In 1962 at Mumford High School you had what was commonly referred to as two schools within that high school, that being that you had tracking there which created segregated classrooms.

MR. BUSHNELL: If the Court please ---

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[3926] . . .

Q. Certainly in the history of the school system there never was a school, an elementary school, which was maintained deliberately as an all-black school, or an all-white school?

A. I wouldn't say that.

Q. Then would you explain your answer?

A. Certainly the Higginbotham School was built in the center of a black settlement for the precise purpose of serving just that black settlement. We shouldn't hide these things.

Q. No. All right. I knew you were going to refer to the Higginbotham. Now in regard to anyother school, is the Higginbotham the only exception?

A. Well, this is the one I think of at the moment. And I don't really think of any others in Detroit in a situation like that.

Q. And of course as you have testified that situation was corrected some years ago?

A. No. I didn't testify to that situation as being corrected. [3927] It's still an all-black schoo. We have taken measures to integrate the students into Beaubien, and at the time Beaubien was built that was an all-black school. So I can't say that it was corrected even today.

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COLLOQUY

[4001] . . .

THE COURT: Well, during the lull I might as well take care of a few things.

Mr. Lucas, a motion to dismiss made on behalf of State defendants I have considered, and I am denying it. You will prepare an order.

MR. LUCAS: Thank you, sir.

THE COURT: And that is as to each and all of them. I propose to resume the trial in this case following tomorrow on July 15, Thursday, and then I propose to continue the following week beginning on Monday rather than on Tuesday, hopefully

that we can conclude the matter during that week. And it may become necessary for me to set time limits. If it seems feasible I will do it, but I will try to avoid it. I have taken into account what you gentlemen have indicated you think you will need in terms of further time for proofs.

Now, meanwhile you might as well get going on your proposed findings and conclusions because the trial [4002] schedule on proofs will not be a factor I will take into account in submission of those.

MR. BUSHNELL: I'm sorry, sir. I just didn't understand the Court's last comment.

THE COURT: Well, you will in a minute.

MR. BUSHNELL: Oh.

THE COURT: I want briefs, proposed findings and conclusions to be filed not later than July 26th. This is in no way conditioned on when we finish with the proofs, but I expect by that time we will have finished with the proofs.

Now, there will be some housekeeping matters to take care of. First of all the construction injunction which is pendente lite, so you both might want to give some consideration to that, and I will welcome any suggestions any of the parties have with respect to what if anything need be done pending my resolution of the basic issue on segregation here. And what I'm thinking about is this, so you will share my thinking: I think that those who are involved in this lawsuit ought to be preparting for eventualities, and I mean within the limits, the maximum and the minimum, so that if the time comes for judicial intervention, and Mr. Reporter, that is not interference. It may be so classified by counsel, but the word is intervention – [4003] it would be well for the parties to be prepared if that develops because I am mindful of the time pressures that I am under, and I am going to pass the pressure on. And that means that I don't want the parties to be saying: "Well, we didn't know you were going to hold this way." I want everybody to think in terms of what may happen and time accordingly. Let me be more specific. I have just indicated that I denied the motion of the State defendants to have this action dismissed against them.

I am not going to take the time at the present time to outline my reasons for it. If that becomes necessary in due course I will. I

have my reasons, and I am aware of them without taking the time to put them down in a formal ruling. If the Court in this case finds that the situation calls for some other judicial action then the School Board ought to be preparing themselves to meet that eventuality. But the State defendants too. I don't think that the State defendants should hide, put their heads in the sand and avoid considering what may happen if certain developments already made plain in this case take shape.

Mr. Ritchie has made some points along that line, and I have, and to repeat mine as I have said to several witnesses in this case: "How do you desegregate a black city, or a black school system;" That is why I was [4004] interested in the projections of the student population of the city. We end up with student population of Detroit 80 to 85 percent black. How do you integrate, or, if I find segregation, to put it another way, how do I desegregate Now, State defendants, particularly School Board as well, ought to be thinking in these terms indeed if that's what develops.

I throw these out so that I am putting people on notice. I don't know whether Mr. Young or Mr. Krasicky – is Mr. Young in town?

MR. BUSHNELL: No, sir.

THE COURT: His office is here, or in Lansing?

MR. BUSHNELL: They are both in Lansing, sir.

THE COURT: Both in Lansing. There is a State Attorney General's office here, isn't there?

MR. BUSHNELL: Yes, sir.

THE COURT: There used to be, anyway, many years ago. I think they should be notified of my ruling in advance of the time that you draft the proposed order. I will be pleased if one of you took on the job of also advising them as to the recesses I have indicated, and also the new schedule.

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[4132] . . .

JAMES W. GUTHRIE

Q. Given this fact, Doctor, of a significant decrease in white pupil population over the 10-year period and a significant increase in black pupil population to the point where today or at least for the past school year of '70-71 the pupil population census shows that Detroit enjoyed a 65 percent black population and a 34 percent white population and given the additional factor that the predominant economic or SES condition of the kids in this district is poor to poverty level, what, in your opinion, sir, can be done to develop a delivery [4132] program of educational service that will provide both higher performance, educational performance achievement for the poor or poverty child and to provide a racially integrated educational experience for all of those children?

A. Given the facts as you state them there are two strategies I would pursue were I a decision maker in this instance. I suppose the most obvious is to begin to regard the boundaries of the Detroit city schools as little more than arbitrarily drawn and historical artifacts.

Q. By boundaries of the school, what do you mean?

A. I mean of the school district.

Q. School district?

A. Yes, such that you would begin to consider this entire metropolitan Detroit area as the basin in which school children were located and you began to establish school attendance areas which did not take school district boundaries into regard. By so doing as I understand the facts you have given, one would increase the likelihood of gaining not only racial integration, which indeed I do regard as important, but also racial and social class integration, which I think is advantageous in that it leads to increased performance on the part of black students and better attitudes of whites and so forth. That is one strategy I would pursue to begin to disregard school discrict boundaries and I would do so under [4133] the rationale insofar as I know the education is a state function and the state can draw boundaries as it chooses.

Another point to be considered is that I would imagine within the boundaries of the school districts of the City of Detroit there are non-public schools, probably the majority of which are Catholic,

parochial, and unless Detroit is a rare exception to a big city pattern the majority of students in those school will be white and probably clustered there also will be whatever remains or a large portion of whatever remains of Detroit's middle class white population.

I, therefore, would look to see what instruments of social policy could be brought to bear to use the students in those non-public schools for integration also and I have not in my own mind pursued that very far. I don't know what legal levers, if any, exist to do that, but a first step for me I would begin to question their tax-exempt status, if indeed they seem to follow a pattern of such de facto segregation themselves. At least de facto segregation, if I am correct in my added fact that they are a vast majority white middle class of students.

So what I am searching for is within the City of Detroit and outside of it, I am searching for those pockets of white and upper SES students which could be used [4133-A] to achieve the social class and racial balances which I think, and I think evidence supports, would make for effective educational settings.

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[4136] CROSS EXAMINATION BY MR. LUCAS:

Q. Doctor Guthrie, we will have Mr. Bushnell's exact words, but he asked you a summary question, as I understood it, that you thought what I would characterize as a metropolitan school system was the answer to providing maximum educational opportunity in terms of criteria you spoke to. Do you recall the question?

A. Certainly the intent of his question I do recall, yes.

Q. Isn't it actually true that that solution is strongly suggested in order to provide equal educational opportunities to children what might be characterized as a low SES district as Detroit [4137] has been characterized?

A. If you permit me, sir, I really can't respond to the "equal" in there. I can respond that in my view it would lead to a more beneficial situation than what I am led to believe exists presently.

Q. Isn't that the entire thrust of the school's inequality, that

you made your conclusions, that you have got a low SES district in terms of the state assistance granted to districts that you get inequality between low SES districts and surrounding high SES districts in terms of educational services?

A. That's correct. But that the educational service developed between those districts characterized in that way.

Q. It won't provide equal educational opportunity with the full gamut of possible means, but in terms of the educational services which was the area you spoke particularly to, as it needed in order to provide that equality, is it not?

A. Well, it appears to me, if we are still on the same line of questioning, that so-called metropolitan solution is one avenue down which one can go to rectify the inequality which exists presently.

Q. From your study of the State of Michigan, in particular in relationship to the City of Detroit, is there at the present time inequality between the Detroit district and other districts with so-called high SES districts?

[4138] A. The data from which the study in front of you were written – was written, those were 1966, '67, '68 and in some instances '69 data, and at that time you are correct. I have no examined it with data more recent than that.

Q. I see. But, as far as you know as of that time it was correct?

A. I don't know anything which was to my knowledge which would have changed the situation substantially in the time since then.

Q., It's another way of expressing the mixture of elements which you have described, an attempt to achieve hetrogeneous school situations for all school children; that is, a mixture of both race and social class inschool?

A. I didn't understand or didn't hear the first part of that question.

Q. Well, you used the term heterogeneous neighborhood in other parts of your testimony, and I'm asking you with respect to Mr. Bushnell's questions about obtaining a mixed social class which you stated should be a majority of high SES and integration

ratio in the community. Isn't this another way of saying you would achieve or be attempting to achieve heterogeneous school situations for the children?

A. If you permit me, sir, the qualification I need to say that I don't want just any heterogeneity, at least within some boundaries or some other specific times of heterogeneity.

Q. I mean, the districts described by Mr. Bushnell and the examples [4139] you gave, majority of the – the majority of high SES students, you think were –

A. Well, okay. I suppose that you find that later capability of qualifying things of this sort.

Q. No. I would like to qualify them now. I don't want you to overstep or overstate your position or omit something you think is significant to the –

A. Sure. I appreciate that opportunity. The hetlogeneity I would like to encourage is racial integration within the context of social class, integration also. Now, there are all sorts of other school reforms, and the school rearrangements I would like in conjunction in that, but I'll not go into those at this time.

[4140] Q. What you are saying really is there no one answer to improving the educational product?

A. I concur with that. I would be reluctant to stipulate one magic formula.

Q. Particularly at the present state of the art?

A. Yes.

Q. With respect to the boundary lines as they exist in the City of Detroit at the present time do you know of any educational interest, any valid educational interest which mandates – let me look at the big map. It is probably easier for you to see. – that children on this side of the line be educated here rather than over here? (Indicating)

A. Your reference is to the boundary of the City of Detroit schools?

Q. Right. This is a city boundary.

A. If your question is is there any educational reason why

children should be educated on one side versus the other side – is that correct?

Q. Perhaps that is not the question I wanted answered. Is there any reason for restricting their education to the interior boundary here?

A. Well, there certainly is no educational reason I can think of.

Q. I believe your study which you referred to here speaks in terms of your understanding of the primary responsibility of [4141] the state, particularly this study from the State of Michigan for the education of children throughout the state and it is not just in the City of Detroit or just in Hazel Park or Warren, Michigan?

A. My ears hear two kinds of question in that. One is that the study was not intended to be of the children of any particular district in the state. It was intended to be illustrative of the entire state. Secondly, though not an attorney as yourself, my reading of the case law is that the education of children is a state function.

Q. You actually quote a constitutional provision from the State of Michigan constitution to that effect?

A. That's correct. To my knowledge that provision has not been altered since it was quoted.

Q. From your study of the financial side of the operation of public schools in the State of Michigan the involvement of the state in every school district is substantial particularly in terms of its financial contribution?

A. Might I say that the effects of the state are substantial in every district.

Q. Can you explain what you mean by that?

A. Well, the state in my view is responsible for the financing of the educational services delivered in a school district.

Q. If the district didn't have the state's money they would be [4142] out of business as a practical matter?

A. That is true for most districts if we limit our definition of the state's money to that money which is put into the district as a consequence of the state formula.

Q. Right.

A. My view of it, and I don't know if you would accept this, that every tax penny raised in that district is state money, but that may be too radical a view for you to wish to accept.

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[4199] . . .

Q. Doctor Guthrie, would you recommend the Board adopted, Court adopted, or required parties to prepare a desegregation plan that they include the entire metropolitan area in that plan?

A. Would I recommend that?

Q. Yes.

A. I most certainly would from the facts that I understand to be correct as given to me today about the racial composition of Detroit as a city, and about the socio-economic status composition of Detroit and the City, and I would recommend any desegregation formula to include those districts which compose the metropolitan area of Detroit. I also know if the Court could find a legal way to do so I would also look at the non-public schools to see if they might not play a role in racial desegregation. My fear is that which has occurred, I'm told has occurred in some parts of the South, where desegregation has led to burgioning of non-public schools, such that those–there is a possibility of resegregation. That's occurred to me.

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[4201] CROSS EXAMINATION BY MR. RITCHIE:

[4203] A. Excuse me, sir, might I eleborate if you would allow me?

Q. Certainly.

A. I believe in Berkeley, California where I live, by choice–I was one of the parents that participated in trying to get that area to racially and socially integrate such that my children for some part of their schooling are bussed into neighborhoods that we now are characterizing as being less fortunate and you know I don't find my children changing very much in terms of their relations to

adult role models. I think their view of the world has been broadened a bit.

They now see drunks and dope addicts they otherwise would not have seen or at least they see some drunks and dope addicts not dressed as well as they have seen and I [4204] don't think my children have been alienated or are beginning to wander down some unreasonable path not to my liking. I think, I thope I exercise a great deal of influence over their aspirations.

Q. You said with regard to the experiences of your own children they are being bused into a school you now characterize as in an unfortunate or less fortunate neighborhood. Is the manner of their admission to this school such that they are brought right to the school itself and admitted into the school and that they do not pass by,walkingthrough the neighborhood itself?

A. They go underground through a long tunnel which passes -no--they are bused right up to the school.

Q. The reason I asked this question is that I do know something about the reaction to the April 7 decision you heard about but are unfamiliar with the exact plan itself. That plan did contemplate that children from the so-called higher neighborhood would go to a school in a less fortunate neighborhood but that there was no transportation available and that they would have to walk or ambulate through the neighborhood itself and would it surprise you if I said that that was the cause of great concern or consternation in the neighborhood?

A. Well, I think that from my point of view that is a reasonable fear. I wouldn't want my children to walk or ambulate through [4205] an unfortunate neighborhood if I thought they physically were in danger. That would worry me and I think in some circumstances it could be so in those instances where that is a reasonable fear on the part of parents, I think the schools and other governmental agencies are charged with the responsibility of making sure the conduction of those children to school is indeed safe. I would suggest a bus as the way to do that.

* * *

ARTHUR L. JOHNSON

[4328] . . .

Q. Mr. Johnson, would I be correct in understanding that your opinion is that given an educationally-sound and administratively-feasible plan, that the time for school desegregation is now?

A. Yes, sir.

Q. Mr. Johnson, during the first segment of your direct examination, you spoke at some length with respect to your work and that of your division in the development and dissemination of multi-racial and multi-ethnic texts and related course [4329] materials, is that correct, sir?

A. That's correct.

Q. Mr. Johnson, from the standpoint of an educator, the standpoint of sound education, realistic education, you would have supported the development and dissemination of such materials in all school districts, would you not?

A. Of course, yes.

Q. And that would be true in a 100-percent white district, would it not?

A. I think there is a need for some recognition of the difference in need that black students bring to the system in the light of the experience of black students in the system and the way the system of education has treated the black community, the difference in need that the students bring and, in the same sense, that the white students bring.

Q. Yes, and in a system that is all white and doesn't have the benefit of an integrated experience, multi-racial tests would be important?

A. Yes.

Q. You would support that?

A. Yes.

Q. You would do so also from the standpoint of educational soundness in a 100-percent black district?

A. That is true.

[4330] Q. Mr. Johnson, would that be true also of the curricular and extracurricular materials that you and Mr. Bushnell discussed after the recess, the radio and TV materials? You would support their dissemination in all school districts from the standpoint of educational soundness, would you not?

A. I would. I want to make it clear, however, that I emphasize two levels of need or two types of need here. Historically we are talking about a large segment of American citizens who happen to be black whose racial history has not just been distorted but in a large measure denied. Now, I think it is of primary importance that those students and their families get to know themselves and that they are able to reclaim their heritage. That is essential. I can't see it is equally important to a white student that he knows that history. It is important, and in the nature of our society I think it is essential that he knows something about that experience as much as black students. But, the beginning point is that black students know themselves and their historical heritage.

Q. But Mr. Johnson, putting aside cultural self respect and intercultural respect, simply from the standpoint of an accurate presentation and educational history you would support the dissemination of such material in all schools, would you not?

A. Yes, but I emphasize again you have two problems here, on the one hand the general and equal distribution of history materials [4331] that are fair, and that is to the good of all students, black and white, and then in addition to that we must recognize that we have a history that would be something more to black students than white students, and we have to try to meet that, and that is what we try to do, also.

Q. Mr. Johnson, you testified, if I understood correctly, sir, that as head of your division, Deputy Superintendent in charge of your division, with respect to educational problems you relate to all segments of the community as best you can, and is it a fair statement to say, sir, that you are called upon to make

presentations to the patrons of the school system concerning school board policies?

A. Yes.

Q. Mr. Johnson, can you tell us approximately in the calendar year 1970, for example, how many formal and informal public presentations by the spoken word you made?

A. In the calendar year 1970?

Q. Yes, just an approximation.

MR. BUSHNELL: Excuse me. Mr. Johnson himself, or members of the division including Mr. Johnson?

Q. (By Mr. Flannery) Well, may we start with you, Mr. Johnson?

A. In public appearances I would say perhaps an average of say one a week through the year. It may vary at times. At times I may meet with two or three or four groups in a week, and [4332] other times maybe I didn't make a public speech in two weeks or maybe three. But, looking at the total year it might be something like an average of about once a week, and these were groups that ran all the way from say maybe 15 to 20 citizens to a large number of one or two or three hundred.

Q. Mr. Johnson, I infer that other members of your staff make similar presentations.

A. Right.

Q. Could you aggregate for us approximately how many such presentations would be made during the year by the other members of your staff to be added to your 50 or so--

A. (Interposing) For the other members of my staff I would say perhaps about half of what I do. I think there may be a greater need on me because of my leadership in the division to make certain types of public appearances, particularly speeches.

Q. Mr. Johnson, are you aware of the existence of all white or predominantly white neighborhood citizens' associations in the far eastern and far northwestern and northeastern parts of Detroit?

A. I am aware of organizations which I would assume in those sections of the community are all white.

Q. And on the basis of your knowledge of the community that you have testified to in response to Mr. Bushnell's question about metropolitanism, is my characterization, apart from [4332-A] exact titles of them, as neighborhood improvement associations an accurate one?

A. I would think so.

[4333] Q. Mr. Johnson, how many of the presentations that you made during the last three years were made to any of those groups?

A. The last three years?

Q. Yes.

A. It is difficult to say but – I can't say that I have spoken to any all-white neighborhood improvement associations.

Q. That is the question.

A. No, I have not.

Q. How many presentations to such groups have been made by members of your staff to your knowledge?

A. I don't know.

Q. Do you know of any?

A. I'm not able to – yes, I know Doctor Flynn has at some point spoken to some such groups but I have not.

Q. Can you approximate for us, sir, how many presentations he or any other member of your staff might have made to such groups?

A. I can't say what the number might be. I don't think it was significant.

Q. Mr. Johnson, in response to a question by Mr. Bushnell you addressed yourself to the findings of the Citizens Advisory Committee on Equal Educational Opportunities in 1962 and is it a fair characterization of your testimony, sir, to say that among the findings of that commission that group of citizens in which you were a participant, is that there had been in the [4334] Detroit School System up to that time discriminatory allocation of faculty and staff personnel?

A. I would say that the committee recognized that there were areas of inequality that needed to be corrected.

Q. Did I understand you further to testify in your judgment from the standpoint as a school official that that report signaled the taking of beginning steps toward faculty desegregation?

A. Not exactly the beginning. I cite the report and the work of that committee as representing a major new push or a signal point of recognition of the problem of some movement by Board and staff from that point to remedy the weaknesses that existed.

Q. Mr. Johnson, as an official of the school system, you don't suggest, do you, that the effect of discriminatory faculty assignments have yet been eradicated in the Detroit System?

A. I don't say they have been eradicated. We recognize, for example, that where we would like to move black and white staff in the interest of integration we don't always have the people standing in line to move them, so we have a continuing need here to have staff that is ready to move in the system as they are needed.

Q. I understand that the task is not yet finished, if I understand you correctly?

A. That is correct.

Q. I didn t understand the part of the problem "we don't have [4335] people"?

A. Just as in the case of the instruction programs and others, we don't always have staff that is ready or standing in line to move them where they are needed in the interest of integration.

Q. Is the transfer –

A. Let me emphasize.

Q. Excuse me.

A. In terms of the fairness of policy and fairness in the application of policy I would say that I think we are on sound ground at this point. In other words, I don't think that a black teacher or a white teacher has much to stand on if he is alleging discrimination in his assignment and that there are no barriers so far as I know that would prevent the movement of a black teacher to any school in the system or the movement of a white teacher.

Q. Mr. Johnson, we are not speaking about faculty transfer applications across racial lines, we are speaking about system

allocation of faculty. Was I unclear?

A. Would you make clear what you mean?

Q. Yes, sir. In terms of allocating black and white teachers, I understood your testimony to be that prior discrimination patterns, that is, the pattern of allocating black teachers to predominantly black schools with exceptions, of course, [4336] and the pattern of allocating white teachers to predominantly white schools.

MR. BUSHNELL: I will have to object. The witness hasn't testified to any such thing as the expressions.

MR. FLANNERY: May I finish the question?

MR. BUSHNELL: This is counsel's characterization of what he would like to infer.

THE COURT: Let him finish the question.

Q. (By Mr. Flannery) We were in agreement, were we not, Mr. Johnson, that the effects of that prior pattern to the extent found by the Citizens Commission which you spoke of have not yet been eradicated?

A. I would say the effects of that pattern have not been eradicated.

Q. All right. Now, did I understand you to say that there are not teachers standing in line, so to speak, as volunteers to overcome that pattern or did I misunderstand?

A. No, I don't think you did. What I mean, Mr. Flannery, is that, for example, we are very much concerned at achieving as best we can integrated administrative staff and depending upon the location of a particular school and the time that we have an opportunity to make an assignment we don't always have the person in line to help us integrate that staff as we are trying to do.

Q. Let me try to get at it another way, sir. Is voluntarism on [4337] the part of teachers present in schools predominantly of their own race, is that part of the problem?

A. Voluntarism?

Q. Yes.

A. What do you mean?

Q. When you say we don't have the people ready to move or to be moved, am I to infer that one aspect of the cross racial assignment which will ultimately, as you described, eliminate prior patterns, one aspect of that is willingness on the part of teachers to accept such assignments?

A. We are not operating this policy on the basis of willingness. There is a clear policy which requires integration and equal opportunity in application of the policy so it is not the judgment of the teacher or the administrator that is the controlling factor by any means.

Q. If you know, sir, tell me further if you will explain to me in greater detail, the concept of an inadequate number of people standing in line?

A. Well, I guess I didn't make myself clear. We are interested in integrating a faculty.

THE COURT: Do you mind if I put it another way, maybe we can get at it.

Q. (By Mr. Flannery) Is it the shortage of the right people?

THE COURT: Maybe this is what Mr. Flannery [4338] is getting at and perhaps I can put it a different way.

I assume what Mr. Flannery has in mind is that according to the tables of statistics which have been entered here, it is the position of the plaintiffs that while there should be a balance of staff both faculty and also administrative staff, let's talk of faculty generally in proportion to a racial balance in the city, that has not been achieved. That is their position. I think he wants to know if you agree with that and if that is so, why is it so?

A. I think –

THE COURT: Is that what you are getting at, Mr. Flannery?

MR. FLANNERY: Yes, sir.

A. Okay.

THE COURT: What I assume is bothering Mr. Flannery is this: He says you say that the policy is to develop this balance?

A. Right.

THE COURT: And that was the thrust of the '62 study.

A. Right.

THE COURT: That balance should be achieved or should be the goal.

A. Right.

[4339] THE COURT: Mr. Flannery says, well, the table shows that hasn't been accomplished yet. Are you trying to do it, and if so, why do you not meet with more success?

A. Your Honor, the facts about the pattern of distribution as it is at this moment speaks for themselves. I wasn't contending in any sense that these facts are not accurate. What I am saying is that in the history of the efforts where we have at this point, for example, approximately 40 per cent black teachers in the system, you are not likely to have the kind of equal distribution with those percentages that someone might expect us to have in a particular school. There are other reasons that distribution doesn't present itself perhaps in a better light or we don't show more integration and this is what I was referring to earlier. It is limited in part by the availability of teachers to do certain type of assignments and we are limited by the availability of administrators to do certain types of assignments so in a number of situations where we would like to make the placement, for example, of a black administrator or move blacks generally in a particular direction to alter this pattern, I am saying that people are not always there or there are other kinds of community problems which tend to operate against our efforts to create the kind of balance which we want or which we would find desirable.

So the facts are as you state them, we [4340] don't have that balance and in the way we would like to have it and the way we think it is desirable and indeed essential to do what we are trying to do.

Q. But the pattern did not arise, Mr. Johnson, as a result of a differential in particular qualifications?

A. Indeed not. I think the pattern, Mr. Flannery, is the result of discrimination.

Q. Thank you. Mr. Johnson, I invite your attention to Plaintiff's Exhibit 4-V which I would like to retrieve from counsel

if I may. I think it was the August 1970 equalization of modern dancing memoranda and other subjects.

I'm sorry, Defendant's Exhibit V4.

Mr. Johnson, are you familiar with the memorandum I referred to, sir?

A. As long as I had a chance briefly to look at it.

Q. You and Mr. Bushnell discussed this during your examination?

A. Yes.

Q. Mr. Johnson, the problems represented here were issues requiring affirmative attention as of August 1970, is that correct?

A. Yes.

Q. The answer is yes?

A. Yes.

[4341] Q. Did I understand from your direct testimony that as yet with respect to interschool, junior high school programs further work remains to be done, interschool junior high school athletic programs?

A. I think so.

Q. Mr. Johnson, have you kept up your contract in Americus by any chance?

A. Americus, Georgia?

Q. Yes, sir.

A. On a limited scale.

Q. I notice in this memorandum every one of your 22 high schools has at least two black coaches. "Our total coaching staff is more than 60 percent black personnel." Was that a recent development, that is, as of 1969 or '70, the achievement of those figures?

A. I think that we finally worked on that point in 1970, but it wasn't, you know, something that was done in a week.

Q. Do you have any information as to when the Americus, Georgia system had to meet the similar quota and when it succeeded in doing so and when it had two minority members on

each faculty?

A. Well, I started to guess, but I won't. I do keep up a bit with Americus but I am not conversant on that.

Q. Would it strike you as ironic if Americus reached those figures before Detroit had?

[4342] A. Not at all, no. I am very, very respectful of the fact, Mr. Flannery, there is a significant difference between Southern and white communities on all counts in implementation of all programs and they vary.

Q. Traditionally those systems have not been thought to have been ahead?

A. In the South?

Q. That's right.

A. That's right.

Q. Mr. Johnson, are you familiar with Mr. Henrickson's testimony about the transportation of black children to the Higginbotham School in approximately 1960?

A. I am not familiar with the testimony, no.

Q. Were you an executive secretary of the local branch at that time?

A. I don't know what he had reference to. I don't know what you are referring to.

Q. In 1960 you were Executive Secretary of the local branch?

A. Yes.

Q. Did issues arise or problems come to your attention concerning the busing, the transportation of black children past white schools with space?

A. Yes.

Q. Did your organization address itself to that?

[4343] A. Yes, it did.

Q. What did you do about that, sir?

A. We simply felt that the transportation of students should be done in a way that they were integrated. We were particularly concerned at the time that students who were being transported

should be integrated in the receiving school population.

Q. The so-called intact busing problem?

A. Right. And there was a question to be raised and we did raise it about transporting black students by any school where there was space, particularly if there was an opportunity to integrate students in the process.

Q. Was it your view, Mr. Johnson, those practices were denial of equal educational opportunity?

A. Certainly.

Q. Have you familiarized yourself with the testimony in this record or have you heard, had an opportunity to hear it concerning the existence of so-called optional attendance zones in the Detroit System?

A. Would you repeat the question, please?

Q. Have you, from looking at the transcript of testimony –

MR. BUSHNELL: If the Court please, I will object to all of this. It exceeds the scope of direct.

THE COURT: Well, I have observed before that I wasn't going to hold to that restriction. I gave you [4344] the same latitude, if you recall.

MR. BUSHNELL: Yes, sir.

Q. Have you had a chance to look at the transcript or heard any testimony with respect to the so-called optional attendance zones, that is, the choice of children living in one area had the choice of more than one school they might attend?

A. I know a little about that.

Q. Did you know about that in the context of your duties as Executive Secretary of the local branch?

A. Not real well. I never knew the facts on this very well. We did not, as I recall, get into that, not on my initiative. We did not make issue with the Board of Education in my memory on that particular point, but I am simply saying I am aware now and I was in the past aware of some questions to be raised in that area, but I never got a firm handle on it.

Q. To the effect that some practices would permit white students to avoid attendance at a neighborhood school, would that

be in your view a denial of equal educational opportunity?

MR. BUSHNELL: There is no testimony in the record to support that allegation.

THE COURT: He may answer the question.

A. Yes, I would consider that.

Q. The Sherrill School case arose during your tenure, did it not?

A. Yes.

[4345] Q Were you involved in that, Mr. Johnson?

A. No, sir, I was not. We had an interest but the branch was not directly involved.

Q. Did the branch support the suit, the claims of the plaintiffs and their counsel?

A. The branch wasn't really called upon to support the suit and as I recall we were not involved.

Q. Mr. Johnson, did it come to your attention or did the allegation come to your attention when you were secretary of the Executive Branch that prior to sometime in approximately the fall of 1966 the Detroit System of open enrollment was being employed in some instances by white students to avoid attendance at predominantly black schools?

A. Did it come to my attention?

Q. Yes, sir.

A. As I said, I never had an opportunity to deal with that as a problem. I simply did not get a firm handle. I would imagine, Mr. Flannery, as strange as it may seem there were always a multitude of issues and problems of discrimination and segregation complaints to the Executive Secretary of the NAACP.

Q. Yes.

A. He simply may not in 14 years have gotten to the question you were raising and I did not.

[4346] Q. Don't misunderstand me. I don't mean to fault you for not being personally familiar with the entirety of the agenda; I am sure it was more than one man or any number of good men could cope with effectively. But in your duties as a school official, Mr. Johnson, or in your duties as Executive

Secretary of the local branch, did it come to your attention that that practice as I have described it obtained in the Detroit System until approximately September of 1966?

A. Yes. I happened to know and had discussions with the retiring General Superintendent, Dr. Drachler, about the problems and faced with the circumstances I got to know with some measure better than I did earlier in the discussions with him, I would have acted as he had done.

Q. Would it be your view that such practices would result in a denial of equal educational opportunity to children?

A. I think so. If the practice denies white students or gives to a white student an opportunity which is not available to a black student I think that is discrimination and shouldn't be countenanced by a system.

Q. If it is used in a separatist way that is pupil segregation, isn't it?

A. It would permit and encourage in some way segregation, yes.

Mr. Johnson, do I understand your testimony to be that as Executive Secretary and as a member of the Citizens' Advisory [4347] Committee and perhaps as a member of its predecessor group that you recognized in your judgment there were policies that operated systematically to deny equal opportunities to children in the Detroit System?

A. I hesitate to say policies as emphatically as it might be said.

Q. I will accept "practices".

A. Practices, yes.

Q. Fine. Is it further your view, Mr. Johnson, that those practices or a number of them have been remedied or had been cured or had been attended to?

MR. BUSHNELL: I am going to object to this until we find out what practices are being attended to.

MR. FLANNERY: I think the witness can distinguish between any that he agrees have persisted and any that have not been.

THE COURT: Are there in existence now discriminatory practices?

A. I would have to say that I think we have the results, we still live with the results of discriminatory practices. I am not aware of a constant discriminatory practice at this point but I think we have the results to live with and the results count.

MR. FLANNERY: That is all I have, if it [4348] please the Court.

MR. BUSHNELL: No redirect.

THE COURT: I have one question, Mr. Johnson, and I hope it doesn't lead to a lot of others: based on your background of age and experience and your various assignments both inside the School System and outside but having much contact with them, is the Detroit School System a segregated system or integrated system or neither?

A. I would say it is what we would have to describe as a segregated school system.

THE COURT: Why?

A. Because you have a large clear pattern of concentration of black students in certain schools and white students in other schools, and that is what I know to be a segregated school system.

[4349] THE COURT: Without indicating where you stand on it would you say that the drive of perhaps the majority or at least some of the black community of Detroit toward decentralization of the school system in Detroit had its focus on a goal of control of their schools?

A. I think that the drive for school decentralization, your Honor, had its focus on something slightly different or more than control. I think that it was a drive to really connect the black community with the controls of the school system in a meaningful way to such extent that this community could feel that it had equal stake in the whole system and equal access to the power of the system.

Now, I know that the political activist who made the propaganda campaign about community control talked about black control of black schools, but that was always to me the extreme statement of the politics of the process and it did not

necessarily represent the basic aspirations of the black community. As I tried to say earlier, I think it was important that historically this is a community that has felt and lately has come to recognize that it really had little access to the power of the system and did not share the power in the controls of program development, mechanisms equally with whites, and in an effort to remedy this and to, in a sense, establish or re-establish that link between [4350] community life and school life the community moved in the direction of decentralization. In that sense I think it has been a rather valid and legitimate process of renewal of the relationship that should exist between schools and the community.

THE COURT: Well, visualizing hypothetically a possible metropolitan system, do you seen any inconsistencies between trying to achieve integration and yet holding onto community control of the schools?

A. Not so much as an inconsistency but as some break in the pattern of community development and thinking around the schools at the present time. I suggest that I don't think that it is totally inconsistent, because I would assume even with the metropolitan approach if that were developed that with it would go the right of people to move which would give body and substance to this beyond just the movement of students. I'm talking about where people live. But there are some hazards in this for school decentralization, and whatever people may have in mind, when we talk about control as this process is now conceived and even as it is being implemented there are some real hazards there, and frankly, your Honor, I do think that we are under heavy obligation to serve both needs. There is need in the big urban school systems to bring schools in the community back together in [4351] a way that they have not been, to reduce the distance and to increase the involvement of parents in the community in the education process. I do think that is essential in any development of the school system. Anything that tends to frustrate that I think imperils the development of a quality program.

At the same time I believe that integration is required to have a truly quality educational program for black and white students.

So, our command is to find a way to do both, and I know that is extremely difficulty.

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[4620] MR. LUCAS: Your Honor, at this time I would like to reoffer Plaintiffs' Exhibit 180, which is a study, segregation advisory project, done by the Wayne County Intermediate School District under a grant from the Office of Education, Department of Health, Education and Welfare under Title 4 of the Civil Rights Act of 1964. The Intermediate School District was the grantee. I offer the document, your Honor, and draw the Court's attention to particular areas. No. 1 –

MR. BUSHNELL: If the Court please, before the Court's attention is drawn to anything I think we ought to discuss the exhibit, which we have opposed before, and which we continue to oppose.

MR. LUCAS: May I complete identifying it? I'm not going to discuss it. I'm just going to draw the Court's attention to the areas which I think may be relevant.

MR. BUSHNELL: Well, I have a further objection, Mr. Lucas, in that I do not share your opinion that this is a study made by the Wayne County Intermediate District. If I may interrupt, sir, on the face of this it appears that Mrs. Clara A. Brodhead did a project and was the director of the project which was supported by a grant from HEW, the grantee being the Wayne County Intermediate School District. But, as the Court well knows, these funds [4621] from government grants have to be funneled through a designated governmental grantee who is the contracting agent. The City of Detroit, for instance, is the contracting agent for all Model Neighborhood funds, even though those funds are spent by the Detroit School District on projects developed by them. There has been no testimony from this witness, nor has there been testimony from any witness that this was indeed a project of the Wayne County Intermediate District, or that the Wayne County Intermediate District is in any way bound by Mrs. Brodhead's opinions and findings in quotes. Further, this proposed Exhibit 180 was discussed when we took the deposition de bene esse of Dr. Drachler, and Dr. Drachler noted in that deposition, as the transcript revels, that at the point in his history, 1967, that this project of Mrs. Brodhead's is dated, there were no figures available for any of the

school districts outside of the School District of Detroit going to race, even though she purports in here to make certain findings as to the racial characteristics of all of the school districts or many of the school districts outside of the City of Detroit.

We repeat our objection which essentially is relevancy and materiality, hearsay and improper foundation. Now, if you want to point out those sections –

MR. LUCAS: Well, perhaps I will recall Mr. [4622] Barnett unless you are willing to stipulate that Mrs. Brodhead was an employee of the district for the purpose of this project.

MR. BUSHNELL: I really have no knowledge of that, Mr. Lucas.

MR. LUCAS: May I recall the witness?

THE COURT: Yes.

MR. LUCAS: Mr. Barnett, would you step up here again, sir?

CHARLES E. BARNETT

was thereupon recalled as a witness on behalf of the Plaintiffs and, having been previously duly sworn, testified further as follows:

DIRECT EXAMINATION (Continued)

BY MR. LUCAS:

Q. You have heard all of the discussion, obviously, sir. This document shows that the author and director of the project was Mrs. Brodhead. Was Mrs. Brodhead employed by the district for the purposes of this project?

A. May I state it in my own words?

Q. Certainly.

A. Mrs. Brodhead was an employee of the Intermediate District at the time the project was written. She continued on the payroll. [4623] Her check came through the finance office of the Intermediate School District, although the funding was from federal funds. But she continued as an employee – I don't know what the term is – continued as an employee of the Intermediate School District.

Q. And the funds came to the district, not to Mrs. Brodhead, is that correct?

A. That's correct.

Q. And the staffing for the study, was that provided by the District?

A. Financed by the federal grant.

Q. Yes. The money came from the federal government as many school programs do. But, the staffing was of the Wayne County Intermediate District, is that correct?

A. We were all paid through the finance office of the Intermediate District.

Q. Did they have their offices in the District's own building or wherever you have office space?

A. No, our staff was scattered at that time in three different buildings in Detroit.

Q. But they were with your staff, is that correct?

A. Yes, sir.

MR. LUCAS: Counsel, do you have any questions?

[4624] MR. BUSHNELL: Yes.

CROSS-EXAMINATION

BY MR. BUSHNELL:

Q. Mr. Barnett, I assume from your answers that you were with the District at that time.

A. Yes, sir.

Q. In this same capacity?

A. In the finance committee?

Q. No, in the same capacity that your are now.

A. Yes.

Q. How many people worked on this project with Mrs. Brodhead, if you remember?

A. I don't remember. I wasn't associated with it myself. I think there were probably eight to 10.

Q. You do know that more people worked on it than Mrs. Brodhead?

A. Yes, sir.

Q. At that time were they performing any other function for the Intermediate School District than assising Mrs. Brodhead in this project?

A. Not to my knowledge.

Q. As far as you know, sir, their entire salary was paid by the federal government through the Intermediate District?

A. May I explain?

[4625] Q. Please do.

A. I can't say yes or no.

Q. We are just trying to find out, so you tell us what you understand.

A. In my understanding from just overhearing staff meetings and so on there has always been a kind of grey area in fringe benefits that some of the federal grants do not allow. The Intermediate District has seen fit at times to either supplement or pay some fringe benefits. Now, I cannot say with full knowledge just what the extent might have existed in this grant.

Q. I appreciate that. But what you are telling us is, as I understand it, that the Intermediate District has seen fit to underwrite the participation of employees form time to time in federal projects where the Feds don't pick up all of the customary fringe benefits?

A. Yes, sir.

Q. And then when the people finish the federal project I as-

sume that they come back to the District and pick up their old tasks and jobs, as a rule?

A. Well, when you say as a rule, there may have been only one-third of them that found positions, because that project had to employ a number of new people who were not former employees of the Intermediate District.

[4626] Q. No regular employees?

A. Not regular employees.

Q. Now, sir, did the District do anything with this report?

A. The followup federal project was the result of this. As I said, I was not closely associated with it. I did not take part in the writing of the project submitted to the federal government. But there is another project called the shared Learning Project that I think was a direct outcome of this project.

Q. And that shared learning project is one that is in current existence today in the Intermediate District?

A. No, it was a federal project. The Intermediate District did not develop a program on its own to follow this up, as I understand.

Q. One final question, Mr. Barnett. The Wayne County Intermediate District is quite independent of the Detroit School District, is it not?

A. Yes, sir.

MR. BUSHNELL: I repeat the objection, sir. It is not binding on the defendant.

[4627] THE COURT: You are with the Intermediate School District, are you not?

A. Yes, sir.

THE COURT: What is your position again?

A. Educational Consultant.

THE COURT: Tell me this: Who initiated the project which

has been characterized as being headed at least by Mr. and Mrs. Brodhead? Who took the initial step?

A. Your Honor, I don't know. Our deputy superintendnet is quite often concerned and very directly concerned with all federal projects and they are either funded or not and to the best of my knowledge perhaps Mrs. Brodhead had approached Doctor Miller, our deputy superintendent, with the idea and the two of them collaborated on it.

THE COURT: The reason I ask that, I assume that in many of these projects what happens is that an application is made for federal financing of the cost of some project that an agency such as yours might want done. Is that what happened in this case?

A. Yes, sir.

THE COURT: All right.

A. May I add –

THE COURT: Certainly.

A. At times it is a staff member who approaches the administration [4628] and says, "I think I have an idea" and then the Intermeidate District says, "Yes, we will go for it."

THE COURT: I have no other questions.

MR. LUCAS: I have no other questions. Thank you.

(Witness excused.)

MR. LUCAS: I might analogize the position of Doctor Della-Dora working for the School Board for a specific project and he certainly made reports which are reports of the Detroit Board and not of him personally.

THE COURT: Let me hear you on the relevancy of the matter which I consider paramount.

MR. LUCAS: Page A-3 points up theproblem with regard to integration as being more than a problem of city and suggest a role for the Intermediate District in its solution.

Page 1, which is the introduction to the project refers to the situation in both the City of Detroit and outside the City of Detroit with respect to attendance in schools by Negro children and the effect of the segregation of those schools. It is our position that this is relevant, first of all, in line with the sort of things that have been brought to the attention of the Court before various projects, people working on projects, people being aware of the segregated [4629] condition. The report itself goes on and it appears in a number of particular places to speak of cooperation, meetings with the Detroit Board. It indicates that the problem of segregation in the district of the City of Detroit which is the first defendant in this case was a matter of concern and brought to its attention, and a matter of some cooperation or some joint concern with the supervening state agency, the Wayne County Intermediate District.

I might say that the series of objections and discussions may outweigh the total effect of the document because it is only part of a mosaic of proof to the effect that this was known and this was a problem which all parties were aware of including the Intermediate District.

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[4642] PAUL B. SMITH having been previously duly sworn, was recalled as a witness on behalf of the Plaintiffs and testified further as follows:

[4656] CROSS EXAMINATION BY MR. CURTNER:

[4663] Q. If I might put what you are saying another way, using weighted averages as you have emphasizes per student allocation of resources rather than allocation per school, is that right?

A. Yes. One way to get the percentage is not the average for all schools but to take the total number of dollars and divide it up by all pupils. The average that comes out is not the unweighted but the weighted.

Q. But we are in agreement that weighted averages emphasize per pupil allocation rather than school allocation?

A. Yes, we are.

Q. Would it be your position that that should be a system goal of ordinary school systems to equalize per pupil allocation?

A. I'm sorry. Are you asking my opinion on that as a matter of educational practice?

Q. Yes, I am. I take it that the reason for comparing these costs per pupil figures when these averages are weighted is to compare expenditures per pupil under different conditions, and I take it that from that we are intended to draw some conclusion that there is a difference between them. So I'm asking you would you advocate reducing that difference or equalizing the figures?

MR. CHACHKIN: I wonder if it would assist the witness, counsel, to make it clear whether you were talking about total expenditures or Board expenditures or federal funds [4664] or both.

MR. CURTNER: At this point we are talking about the Plaintiffs' exhibit and Mr. Smith's exhibit, which exclude federal funds.

MR. CHACHKIN: You asked his opinion on educational policy, and I would like to have the question –

MR. CURTNER: I'm talking about Board funds only.

A. Well, I believe that what you are asking me – you asked a very general question about whether I think per-pupil expenditures should be equal for all pupils, or do I believe it should be equal for all schools, and my hesitation –

Q. (By Mr. Curtner) That wasn't my question. You are anticipating me.

A. O.K. I can answer that one. I do not have figures for dollar expenditures within each school on one child in reference to another. In other words, I can't tell you that out of 10 children in a school who has the more expensive teacher. So I have nothing that goes to the matter in Detroit of within a school does one child get more or less resources than another. That is simply because I have no information pertinent to that. I do have only school averages, and our question now has to do with how we weight schools to a grand total for the system. So, if your question was pertinent to [4665] what I have done, it would take the form of asking do I think the school should have an equal per pupil

expenditure for all nearly white schools and all nearly black schools, or should it have an equal per pupil expenditure in each and every one of those schools, that is, should the two schools, averages be equal, or should each school whose number contributes to the average be equal. You threw me off, because you threw in pupil.

Q. The reason I threw in pupil was because your weighting of means by pupils emphasizes per pupil allocation rather than school allocation, and I'm trying to pursue that point.

A. O.K. But, it emphasizes the average, what a group of pupils would receive, but of course within a school. I have no data, nor do I in any way summarize a dollar differential in expenditure between one pupil and another in a school. I think somehow I have been thrown off by what it is you are getting at. Could you restate what it is you would like?

Q. My original question was whether you would advocate that we would equalize resources per student.

A. As a matter of opinion then, having observed what I have in this data about Detroit, I would advocate first and primarily that you cease systematic discrimination against blacks.

Q. That is not in response to my question.

A. Yes, sir. You asked would I advocate equality. I can see [4666] conditions in which in a school some inequality might be educationally reasonable, but I can't see any reason whatsoever for systematic inequalities. That suggests to me when I observe it as a matter of fact and in bulk in the educational effort of a school system that we – that I would prefer not to give such a system further excuse for systematic differentiation paralleling racial lines. So, my answer is in Detroit specifically I'm afraid I would have to say yes, not because that is an ideal educational practice, but because I have observed something much less than an ideal educational practice in what little data I have seen here.

Q. So your answer to the question is yes?

A. Yes.

Q. Thank you. Why in this series of exhibits did you look only at local funds and did you take out federal funds?

A. I will give you two answers. First, in Plaintiffs' Exhibit 91

only Board funds were given. That was the original source document from which we worked. But more than that that's what I thought ought to be used, and I had considerable discussion about this first. Here is why: as I understood, the purpose of my exhibit was to give a fair summary of the Detroit School Board's educational efforts inasfar as those efforts could be simply measured, related to obviously educationally relevant procedures such as teaching expenditures, and we could [4667] examine the degree to which they did or did not parallel differences in the racial composition of schools. But the key thrust of the issue at least as it was put to me was to summarize the Board's efforts. Now that, it seemed, simply ruled out mixing federal monies, which are highly targeted in their many forms and particularly Title I which are highly targeted, from the Board monies. I think it may be really a matter of separate interest as to where the federal monies go.

Q. So, the purpose of using Board funds was to determine when the Detroit Board of Education was acting in a discriminatory manner and not whether the students in the individual schools were receiving an equal educational opportunity, is that right?

A. Well, not in bulk. After all, the Detroit Public School doesn't control the whole lives of the children. But it was only those parts of the measured school experience of those children which were under the direct control of the Detroit Public Schools and which were a direct measure of that system's efforts as a matter of its own policies.

Q. But you are in agreement that the federal funds also contribure to the educational experience which children in individual schools experience or receive?

A. Well, again I'm certainly in agreement with the idea that in Detroit the federally-targeted schools are concentrated in [4668] black districts.

Q. No, that is not the question I asked. I'm asking whether a teacher whose salary is paid by federal funds teaches children, and those children's education is affected by that. It seems to me that —

A. Sir, you shift away from my numbers to ask me whether

in general isn't it a fact that federal effort is expended in such a way that it benefits children. I think in general it is.

Q. No, that is not what I'm asking. I'm asking whether a teacher who conducts a class in a classroom has come effect on the students in that classroom.

Q. Has some, but what the effect is is going to depend upon the character of the system in which they operate.

Q. Of course.

A. I do not have evidence here that allows me to testify as to whether any of these resources do directly benefit one child or another. So, I'm just trying to make it clear when you ask a question like that I will ultimately be pressed into giving you my opinion, but that certainly – I don't have evidence on it here.

Q. Exhibit 163 and 164 include a figure which is average teacher and ESRP annual salary.

A. Yes.

Q. And there is a difference between the 0 to 10 percent black [4669] schools and the 90 to 100 percent black schools. The figures in the 0 to 10 percent schools are 12,985, and in the 90 to 100, 11,661, is that correct?

A. Yes.

Q. What accounts for that difference?

A. I can only tell you what parallels it, and you must remember I have only the School Board's documents. The School Board does not account for this difference. I can, of course, tell you that from what I observed from the percentages under salary class 6 or over salary class 10 that there is a strong tendency for those salary classes to parallel the average teacher salary in the school. So, the only information related to that which I have was to read status of teachers and the School Board's category known as salary class. Both of those certainly parallel this figure.

Q. What does salary class represent, do you know?

A. I do not know. I have asked repeatedly to have it broken down for me.

Q. Would it be reasonable to you if I told you that that represents the experience of the teachers, and that there are two

factors in the teachers' total salary in that one is degree level and the other is level of experience or years of experience?

A. If you told me those were the only two, I would be surprised. But those are the predominant two in almost every school.

[4670] Q. Would you also believe if reasonable if I told you that previous evidence in this case has indicated that 85 percent of the difference in teachers' salaries or average teacher salaries is accounted for by differences in average levels of experience or in position in the salary step?

A. Well, we have a $1200 difference. You mean 85 percent of 1200 is accounted for by experience?

Q. Yes.

A. I would strongly disagree.

Q. And how would you account for it?

A. I would account for the 85 percent in the following way: I'm willing to guess, sir – and I'm guessing, now – that someone said 85 percent of the variance is explained, some in annual rate by some factor. The percentage of variance has nothing to do with a percent of a difference. There is a $1300 difference here. 85 percent of variance may be explained by a factor, and none of this difference be due to that factor. Those are two completely different and potentially unrelated things.

Q. I will ask you again what would you say accounts for this difference?

A. Again as a matter of fact I do not know. I only have the Board expenditures on teachers.

Q. You have no reason to doubt that it might be accounted for by [4671] differences in experience?

A. Right, experience or degrees, both contribute.

Q. Thank you. The class size figures in those two exhibits, do they exclude federal funds and federal teachers, the computations? the computations?

A. Class size?

Q. Yes.

A. There would be no federal fund in class size.

Q. Well, class size seems to me dependent on the number of teachers in a school.

A. Right.

Q. And if you are taking out federal teachers then it is going to have an effect.

A. There are no funds involved at all in the computation. There are only numbers of kids and teachers, and these numbers in my summary sheets do exclude the federal teachers.

Q. So that in a school which has certain class size in your prior exhibit, and if half of the teachers in that school were federal teachers, the class size figures in your new exhibit for that school would be double what it was before, is that right?

A. In your hypothetical example, yes.

Q. So that you have excluded federal teachers, but you haven't excluded the students who are taught by those federal teachers.

[4672] A. Again the new table, yes. But, that's why we have the old, and we can see whether there is a large difference.

Q. You have excluded the students?

A. No, in the new table –

Q. So, you have –

MR. CHACHKIN: Let him finish the answer.

A. In the new table we have excluded federal teachers. In the old table we have included the federal teachers. So if you want to see it current and observable but not attributable, just observable pupil teacher ratio, you look at the single letter series.

Q. Except that that series, I believe, was based on October enrollment figures, wasn't it, and February teacher figures?

A. Yes, it was. But, again I think there has to be throughout this such small differences when only enrollment was affected that it is very unlikely that those numbers would change at all due to the substitution of one enrollment from another. The fact is that

children drop out of school from October to February. But it would be a very harsh indictment of the Detroit Public School System in its own right to argue that the black kids are dropping out at a far higher rate than white kids.

Q. It would be a harsh indictment if 6,000 children graduated in September?

[4673] A. Unequally, only whites graduating and not blacks, yes. If they graduate equally, it won't change those figures. There has got to be a difference.

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COLLOQUY

[4674] . . .

MR. LUCAS: Yes, sir.

THE COURT: You may step down.

(Witness excused.)

MR. LUCAS: I have certain statements of Doctor Drachler and Mr. Arthur Johnson made to the Committee on Equal Educational Opportunity on Tuesday, May 12, 1970. These excerpts have been shown to counsel, and I understand he has no objection to my reading them into the record.

The first one appears on page 316 of the volume. There is a statement of Doctor Drachler, and in part from that statement it says:

"On April 7, 1970, the Board of Education approved a plan for seven regions. Within this plan was a recommendation from the superintendent to change the feeder patterns of eighteen senior high schools so that over a period of three years twelve senior high schools involving 35,000 students would achieve greater integration.

"The plan changed the boundary lines between certain high schools to run east and west instead of north and south. The plan had the support of the Michigan [4675] Civil Rights Commission, the Interfaith Council, the NAACP, the Urban League, the United States Civil Rights Commission, and the United States Commissioner of Education. But nevertheless, those who were directly involved, particularly the white community, showed opposition to

the extent that they began a drive to recall the four board members who voted for the plan, and their impact upon the State Legislature was so great that two days after the Board adopted the plan the State House of Representatives amended Act 244 so that the city would be divided into not less than eleven regions, decreasing opportunities for integration; stated that the high school boundaries must be drawn in such a manner that each student that attends the closest high school to his home, and legislated that the plan when adopted must be approved by the people in the referendum.

"The Senate, recognizing that the House bill was probably unconstitutional, simply repealed decentralization on the next day. Thus the State Senate placed the total burden for the move to integrate upon the Detroit Board of Education."

That is the end of the part I wish to read. It does go on to refer that:

"Both bills are now in committee."

MR. BUSHNELL: Has the source of this [4676] been identified?

MR. LUCAS: Yes.

MR. BUSHNELL: Okay.

MR. LUCAS: The next is a quote from Mr. Arthur Johnson, Deputy Superintendent, under the heading Equal Educational Opportunity-Components, and it is on page 340 and 341. It says:

"This goes all the way from the question of the number of dollars that may be spent on the education of the children to the matter of achievement scores, to the question of physical facilities as well as the programs that we can provide for them.

"So, in a real sense we are faced with the problem, I think, of bringing to a system like Detroit those conditions which will at least make it possible for poor black and for poor white to share equally in that which is available, and they are not now able to do that.

"They cannot do it under segregated conditions which exist, and they cannot do it under the terms of the financial aid formula which exists in the state.

"I would like to go one step further, and my concern here was suggested by a question which Senator Hughes raised. It is enough to be a victim of the kind of economic segregation conditions which exist in a community [4677] like Detroit, which Doctor Drachler described in the charts and maps.

"But when you add the problem of racial isolation, which, really, in many respects makes it impossible for the children, even of the disadvantaged to take from other children what they might be able to receive as well as to give, then the problem is compounded.

"This is, as I see it, a very stiffling condition in any attempt to achieve quality education, by the best standards we can describe or identify."

The last item of Doctor Drachler appears on page 350. It refers to racial isolation, and black self-image.

"I might add that in relation to the change that we propose, a group of black parents, supporting integration, who were worried that their children will not be able to compete educationally with the youngsters in the new school.

"I had to show them that their children's scores were higher than some of the children in the school that they are about to enter. The self-image that they had of themselves is that if a school is totally black, then its students are not doing as well.

"I do not blame the parents. Segregation, [4678] attitudes of whites, instructional materials all contribute to this image."

That concludes the plaintiff's rebuttal, your Honor.

THE COURT: All individuals have rested as far as the submission of proofs is concerned?

MR. BUSHNELL: Yes.

MR. LUCAS: Yes.

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